

UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY

JOHNSON & JOHNSON HEALTH CARE	.	
SYSTEMS INC.,	.	
	.	
Plaintiff,	.	Case No. 22-cv-02632
	.	
vs.	.	Newark, New Jersey
	.	June 27, 2023
SAVE ON SP, LLC,	.	
	.	
Defendant.	.	

TRANSCRIPT OF HEARING  
BEFORE THE HONORABLE CATHY L. WALDOR  
UNITED STATES MAGISTRATE JUDGE

APPEARANCES (the parties appeared in person):

For the Plaintiff:      JEFFREY J. GREENBAUM, ESQ.  
Sills Cummis & Gross P.C.  
The Legal Center  
One Riverfront Plaza  
Newark, NJ 07102-5400  
(973) 643-7000  
jgreenbaum@sillscummis.com

HARRY SANDICK, ESQ.  
Patterson Belknap Webb & Tyler LLP  
1133 Avenue of the Americas  
New York, NY 10036  
(212) 336-2723  
Hsandick@pbwt.com

Audio Operator:

Transcription Service:      KING TRANSCRIPTION SERVICES  
3 South Corporate Drive, Suite 203  
Riverdale, NJ 07457  
(973) 237-6080

Proceedings recorded by electronic sound recording; transcript  
produced by transcription service.

1 (APPEARANCES continued)

2 For the Plaintiff: KATHERINE MARGUERITE LIEB, ESQ.  
3 Sills Cummis & Gross P.C.  
4 101 Park Avenue, 28th Floor  
5 New York, NY 10178  
6 (212) 643-7000  
7 Klieb@sillscummis.com

8 ADEEL ABDULLAH MANGI, ESQ.  
9 Patterson Belknap Webb & Tyler LLP  
10 1133 Avenue of the Americas  
11 New York, NY 10036  
12 (212) 336-2563  
aamangi@pbwt.com

13 GEORGE A. LOBIONDO, ESQ.  
14 Patterson Belknap Webb & Tyler LLP  
15 1133 Avenue of the Americas  
16 New York, NY 10036  
17 (212) 336-2008  
18 Globiondo@pbwt.com

19 For the Defendant: ANDREW R. DUNLAP, ESQ.  
20 Selendy Gay Elsberg PLLC  
21 1290 Avenue of the Americas  
22 New York, NY 10104  
23 (212) 390-9005  
24 Adunlap@selendygay.com

25 MEREDITH NELSON, ESQ.  
Selendy Gay Elsberg PLLC  
1290 Avenue of the Americas  
New York, NY 10104  
(212) 390-9069  
mnelson@selendygay.com

ELIZABETH SNOW, ESQ.  
Selendy Gay Elsberg PLLC  
1290 Avenue of the Americas  
New York, NY 10104  
(212) 390-9330

1 (APPEARANCES continued)

2 For the Defendant: E. EVANS WOHLFORTH, ESQ.  
3 Robinson & Cole LLP  
4 Chrysler East Building  
5 666 Third Avenue, 20th Floor  
6 New York, NY 10017  
7 (212) 451-2954  
8 ewohlforth@rc.com  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

1 (Commencement of proceedings)

2

3 THE COURT: All right. We're on the record in  
4 22-2632 on various discovery disputes.

5 Let's have entries of appearance for Johnson &  
6 Johnson Health Care Systems first.

7 MR. GREENBAUM: Good morning, Your Honor. Jeffrey  
8 J. Greenbaum, and I'm with Katherine Lieb, Sills Cummis &  
9 Gross, for plaintiff.

10 And I'll let the gentlemen from Patterson Belknap  
11 introduce themselves.

12 MR. LOBIONDO: Good morning, Your Honor. George  
13 Lobiondo from Patterson Belknap. With me is Harry Sandick  
14 and Adeel Mangi.

15 MALE SPEAKER: Good morning.

16 THE COURT: You have to talk slowly, because I'm  
17 old and my hearing is slow.

18 MALE SPEAKER: Thank Your Honor.

19 THE COURT: Go ahead.

20 MR. WOHLFORTH: Good morning, Your Honor. Evans  
21 Wohlforth from the Robinson & Cole firm for SaveOn SP LLC.

22 With me from the Selendy Gay firm is Andrew Dunlap,  
23 Elizabeth Snow. They'll be presenting the argument today for  
24 our side.

25 And also Meredith Nelson.

1 THE COURT: Okay.

2 So where, I believe, we left -- by the way, I  
3 received your various submissions and your objections to the  
4 other side's various submissions and your failure to agree on  
5 meeting and conferring and every other submission that you  
6 have. And I've reviewed them the best I can, knowing that  
7 Friday they came in at, like, 8:00 and 11:00, and I'm sorry  
8 that people were working late.

9 But I did not work this weekend -- thank you very  
10 much.

11 I am on criminal duty; so I had limited time  
12 yesterday. And I reviewed things today. And, of course, Tim  
13 Duva reviewed everything and helped me out with a bench memo.

14 So I think we can proceed.

15 Where are we going to start, Mr. Greenbaum?

16 MR. GREENBAUM: Yes, Your Honor. I did submit a  
17 letter -- I don't know if you saw it yesterday.

18 THE COURT: I have your agenda. Again, thank you.

19 MR. GREENBAUM: You're welcome.

20 Can we start, then, with 61?

21 THE COURT: Yes, let's start with 61.

22 MR. GREENBAUM: Okay. We are going to have a  
23 little different batting order today. I'm going to start  
24 with 61.

25 THE COURT: Okay.

1 MR. GREENBAUM: Mr. Lobiondo will start with 62 and  
2 also the motion to strike. And then Mr. Sandick will deal  
3 with the custodian issues.

4 THE COURT: Okay. I want to make a general  
5 statement first.

6 These broad-brush requests for protective orders  
7 and compel, I need to deal with things one at a time as they  
8 come up. So as long as I'm going to work on this case, I  
9 don't want to make broad protective orders against all  
10 financial records or against all of anything. I need to take  
11 things one kernel at a time.

12 So please keep that in mind. And, obviously, you  
13 have open access to my court on a regular basis and know  
14 that.

15 All right. Go ahead. 61.

16 MR. GREENBAUM: Yes, Your Honor. Thank you.

17 In considering discovery disputes, the Court, of  
18 course, needs to look at relevance and burden and to make  
19 sure the burden is proportional to the claims and defenses.

20 Your Honor at one the last conferences asked what  
21 was the updated standard on -- for discovery? If -- you're  
22 correct that it was updated in 2015. And I can just read  
23 what is, and I think it shows and it will demonstrate why the  
24 business plans are so vital to this case.

25 And the standard is the parties may obtain

1 discovery regarding any nonprivileged matter that is relevant  
2 to any party's claim or defense and proportional to the needs  
3 of the case, considering the importance of the issues at  
4 stake in the action -- and we have said these are very  
5 important; the amount in controversy -- we're talking here  
6 hundred million or more; the parties' relevant access to the  
7 relevant information; the parties' resources; and the  
8 importance of the discovery in resolving the issues and  
9 whether the burden or expense of the proposed discovery is --  
10 outweighs the likely benefit. Information within the scope  
11 of discovery need not be admissible in evidence.

12 Here, Your Honor, there's absolutely no burden, and  
13 they haven't claimed there is any burden. We're talking just  
14 a few documents. There's maybe quarterly business plan for  
15 the years in question here. And we're not talking about a  
16 broad request. This is a laser-tailored request, just to a  
17 few documents considering the business plans.

18 And, Your Honor, that go to at the heart of the  
19 case. Relevance is a broad standard. And I can't think of  
20 anything more relevant to our claims challenging SaveOn's  
21 efforts to take patient support moneys intended for patients  
22 than their plans to do exactly that, which is set forth in  
23 the business plans.

24 Here, the division -- diversion of patient  
25 assistance funds is the foundation of SaveOn's business

1 model. And they've said that. And the business plan  
2 documents are not only directly relevant, but directly  
3 implicate the harm SaveOn has caused to JJHCS as well as to  
4 its patients and to the public at large; things that are  
5 critical for us to prove for our GBL and our tortious  
6 interference claims.

7 In both of the -- they've actually in this case,  
8 Your Honor, even though now they argue relevance, they've  
9 essentially conceded the relevance in two respects: Number  
10 one, they've also produced a business plan. We have attached  
11 as Exhibit B to our papers, the January 15th, 2019, business  
12 plan. And I'm going to go through it in a few minutes to  
13 show why it's so relevant to our case.

14 But in arguing in opposition, they've also  
15 implicitly conceded the relevance by arguing, ah, the  
16 business plans are merely cumulative. They're cumulative  
17 because they have other stuff on our business operations. In  
18 the joint letter they submitted, they talk about listing  
19 guides to employees who make calls, 140,000 call records, and  
20 they say the client savings from Janssen drugs, SaveOn SP  
21 operations, call centers, the process of communications with  
22 clients and organizational charts -- that would be cumulative  
23 of other discovery that you already have. So they're  
24 conceding these are all relevant topics. And they're saying,  
25 oh, the one document that shows their intent, that goes to



1 the heart of this, we shouldn't get because we have 140,000  
2 records that we have to piece together to try to find their  
3 intent, well, this is the heart of it, Judge. The business  
4 plans show what their intent is -- and.

5 THE COURT: But you have one business plan?

6 MR. GREENBAUM: Yes.

7 THE COURT: And what's in that business plan? You  
8 said you were going to get to that.

9 What's in it that's so important to you?

10 MR. GREENBAUM: I'll explain that, Your Honor.

11 THE COURT: Okay.

12 MR. GREENBAUM: But before I do that, I just would  
13 like to go to why this is so critical to our claims here.

14 THE COURT: Okay.

15 MR. GREENBAUM: Because it shows intent. And  
16 intent is so relevant to what we are trying to prove here.

17 SaveOn admits that it exists only to take advantage  
18 of patient assistance programs, like CarePath. It says that  
19 in their video. We've cited that on many times in the  
20 complaint. And we have two claims here: tortious  
21 interference and deceptive trade practices. And intent is  
22 relevant to both of those. For tortious interference, we  
23 have to show the interference is intentional, that it's  
24 willful and unjustified and that it causes us damage. And on  
25 the GBL claim, we have to show it's directed to consumers and

1 that it's materially and deceptive, that we're harmed, and  
2 that there's a harm to the public at large.

3 And if we can show it's willful, we can get treble  
4 damages up to \$1,000 for each violation.

5 How they intend to take advantage of patient  
6 assistance programs, how they intend to avoid detection. The  
7 law is that they direct to consumers. This all goes to the  
8 heart of our case and shows how they plan to accomplish this  
9 in their business plans.

10 So let's go through the business plan, and it's  
11 attached to their complaint. But if Your Honor -- I have a  
12 clean copy I can hand up separately, if that's easier for  
13 Your Honor. Would you --

14 THE COURT: Yeah, that would be great. Hold on.  
15 I mean, don't hold on. Yeah, go ahead.

16 MR. GREENBAUM: May I approach?

17 THE COURT: Yeah, please.

18 Okay. I don't want to be -- I did this the last  
19 time. Who's in the audience?

20 MALE SPEAKER: Your Honor, those are all associates  
21 with the Selendy firm.

22 THE COURT: Because last time we had an issue --  
23 maybe it was a different case.

24 MALE SPEAKER: Well, we have had an issue. I think  
25 that actually goes to the sealing issues before you on this.

1 At least as far as I know, everyone in the courtroom is  
2 cleared, Judge.

3 THE COURT: Okay. Thank you. Go ahead --

4 MR. GREENBAUM: Your Honor, one of the issues that  
5 we want to try to show on their responses to the changes in  
6 co-pay assistance programs and how has manufacturers,  
7 including JJHCS, has kind of caught on to them and tried to  
8 protect themselves, how they try to wiggle around.

9 If we look at page 7, Your Honor, it talks about  
10 [REDACTED] -- this is an  
11 page 7 -- on some of SP -- SOSOP -- that's SaveOn SP -- member  
12 claims. [REDACTED]

13 [REDACTED]  
14 [REDACTED]

15 [REDACTED]  
16 [REDACTED]  
17 [REDACTED]

18 Let's turn to page 15. We have an organizational  
19 chart. Obviously, relevant. They say, oh, well, you've got  
20 other organizational charts.

21 But it's right here in this document.

22 Page 17, it shows [REDACTED]  
23 [REDACTED]  
24 [REDACTED]  
25 [REDACTED]

1 And then most relevant, on the next two pages I'm  
2 going to show to point to, page 18, [REDACTED]

3 [REDACTED]  
4 [REDACTED] --

5 THE COURT: I don't even know what that means.

6 MR. GREENBAUM: I'll explain it.

7 THE COURT: Okay.

8 MR. GREENBAUM: [REDACTED]  
9 [REDACTED]

10 THE COURT: Okay.

11 MR. GREENBAUM: Warm transfers, Your Honor, it goes  
12 to the heart of our case. We have alleged -- and I think  
13 it's somewhat admitted -- that the way SaveOn makes it money  
14 is when somebody tries to get its prescription filled, they  
15 say, "No, we're not going to fill it." And they call it a  
16 "warm transfer." They say, "No, we're going to hold it up,"  
17 and then basically they're going to hold it up until they  
18 sign up for the SaveOn SP program.

19 So they then transfer to Accredo, and then they try  
20 to get them agree to say -- to join SaveOn. And some  
21 customers have resisted that. And they say, "Well, what's  
22 this all about? Who are you?" And they don't get disclosed  
23 who they are. And we've seen in other documents that they  
24 mislead the consumers. They say, "Well, who are you calling  
25 from? Or you calling from our employer?"

1 "Well, we're representing your insurer." Or,  
2 "We're calling on behalf of the ESI." And they mislead the  
3 public. The warm transfer goes to the heart of it.

4 And they're saying here, we're having a problem  
5 because it's taking too much time on hold.

6 And if you look at the next line, [REDACTED]  
7 [REDACTED]  
8 [REDACTED]

9 And then further down the line, [REDACTED]  
10 [REDACTED]  
11 [REDACTED]

12 Well, we have seen from some other emails, they  
13 have frequent asked questions. Well, if someone said --  
14 well, they're saying they're not going to pay for me if I'm  
15 on the SaveOn program.

16 We are not a program. Tell -- and they tell their  
17 PSRs, tell them we're not a program. We're calling on behalf  
18 of -- we're just an advisor. They tell them to say we're not  
19 an accumulator. We're not a maximizer. They're misleading  
20 the public.

21 And this is the heart of it. It shows their  
22 intent. And if we can tie in these plans with the emails  
23 that we've otherwise gotten, we can show that it comes from  
24 the very top. That's what these business plans are.

25 And, finally, look to page 18 -- 22. 22 goes

1 [REDACTED]  
2 [REDACTED] This is the  
3 heart of the case. We're trying to show that they are trying  
4 to circumvent the changes at manufacturers are making to  
5 defeat their efforts to take our money.

6 So these -- this is only one. I don't know why we  
7 have it. But we know there's no burden here.

8 So why are they fighting so hard if this is not  
9 relevant? It's relevant. It goes to the heart. And they  
10 just don't want us to see it because they know it's going to  
11 be very harmful to their case. We want to see all the  
12 business plans.

13 So what's their response? Well, their joint  
14 letter, they first make this silly argument, "Well, it's  
15 cumulative, that you already have all these thousands of  
16 documents." What do they needed this for?

17 And we said, well, it's right there in one  
18 document. It shows their intent.

19 And they said, oh, they can figure it out from the  
20 other document.

21 That's not a basis. It's kind of a silly argument.  
22 They concede the relevance, but they are saying, ah, it's  
23 just one more document.

24 Well, it's not one more. The document goes to the  
25 heart of it.

1 And then they say, well, it relates to Your Honor's  
2 prior ruling but it involves some non-Janssen drugs. Well,  
3 that completely misstates Your Honor's prior ruling.  
4 Your Honor ruled that when we asked for thousands of pages of  
5 documents on prescriptions for non-Janssen drugs, we weren't  
6 going to get that.

7 But in that very application, we even admitted they  
8 would give us documents that related to Janssen drugs and  
9 other drugs, even if it doesn't mention Janssen, the drugs  
10 generally, but they didn't want us to go down the path of  
11 thousands of documents relating to non-Janssen drugs.

12 That's not this situation. This is a carefully  
13 honed request. This may be five or ten documents involved.  
14 There's no burden. It goes to the heart of our case, and it  
15 should be given.

16 Now, I just want to spend a moment on the --

17 THE COURT: So you want the business plan which  
18 looks like this, I assume, from how many years?

19 MR. GREENBAUM: From that we've all agreed what the  
20 discovery period is. I think it's from 2016 to 2022.

21 THE COURT: Okay.

22 MR. GREENBAUM: We just want them for those years.

23 THE COURT: And this is what you're calling a  
24 "business plan" --

25 MR. GREENBAUM: Yes.

1 THE COURT: -- just so I understand. Okay.

2 MR. GREENBAUM: It says it: "SaveOn SP Business  
3 Plan."

4 THE COURT: Yep.

5 MR. GREENBAUM: There's no hard -- they understand  
6 what we want. They just don't want to give it to us because  
7 they know how relevant it is and how revealing they'll be.

8 Now, one other minor point, there was a  
9 meet-and-confer. Your Honor gave a preliminary indication.  
10 So what's the meet-and-confer? As we said in the letter, it  
11 was heads, I win; tails, you lose.

12 I said, "Well, the judge said she was likely to  
13 give 62," which relates to the operation -- operational  
14 agreement -- operating agreement, which is the heart of that  
15 request.

16 "Well, we don't want to give you that. We'll give  
17 you, you know, the social guidelines."

18 And I said, "Well, what about on 61?"

19 "Oh, we're not offering anything on 61."

20 So that was kind of a waste of time. We got  
21 nowhere on that.

22 Your Honor, I have nothing more to say at the  
23 moment other than this is -- goes to the heart of our case.  
24 It's a limited number of documents. And they've already  
25 produced one, and they should produce the others and do it



1 forthwith.

2 Thank you.

3 THE COURT: Okay. Thank you.

4 So who -- why -- who's going to speak on this?

5 MS. SNOW: Your Honor, Elizabeth Snow from Selendy  
6 Gay.

7 THE COURT: So, Ms. Snow, first of all, why do they  
8 have the 2019 business plan?

9 MS. SNOW: Your Honor, honestly, it was produced  
10 inadvertently. We've been reviewing 600,000 documents, as  
11 they know. We've produced over -- approximately 120,000  
12 documents. And, as Your Honor knows, in productions that  
13 large, mistakes can happen.

14 THE COURT: When did you produce this?

15 MS. SNOW: I believe in March. And, you know, we  
16 don't intend to claw it back. But we do not believe that --

17 THE COURT: Okay.

18 MS. SNOW: -- contained in the business plans, writ  
19 large, is relevant. The only information, as Mr. Greenbaum  
20 pointed to -- you know, he pointed to Biogen. Biogen is not  
21 Janssen. Biogen -- there's no possible allegations that  
22 Biogen was harmed in this lawsuit. All the other  
23 information, such as the org charts or the consumer emails,  
24 they have thousands of emails about the warm transfer  
25 process. They have over 20 organizational charts.

1 To the extent there is information relevant in the  
2 business plans, they have that elsewhere. And --

3 THE COURT: Where elsewhere?

4 And Mr. Greenbaum specifically addressed, which I  
5 want you to talk about, because I don't really understand the  
6 language and, say, page 17, is this what you're saying,  
7 confidential information, [REDACTED]

8 [REDACTED]

9 MS. SNOW: Yes, [REDACTED],  
10 which by definition includes well beyond just these related  
11 to Janssen. Of course, they have all fee information. They  
12 have 114,000 lines of transaction-by-transaction-level data  
13 about Janssen drugs.

14 That is all they need to prove their damages in  
15 this case they have -- their damages claim only rests on what  
16 was done to Johnson & Johnson. As Your Honor pointed out at  
17 the March 17 conference at page 16, you said, "I just think  
18 that what doesn't affect Johnson & Johnson is not part of  
19 this lawsuit."

20 And the information contained in the business plans  
21 that they do not already have exclusively affects entities  
22 other than Johnson & Johnson.

23 THE COURT: Well, first, I think Mr. Greenbaum made  
24 a point and that is that was applicable to that particular  
25 request, which I don't recall off the top of my head from the

1 transcript reading -- I believe that's the point that you  
2 were making.

3 And I believe that's the point I'm making. I don't  
4 want to make general rulings, nor do I want my language  
5 misconstrued to be applicable to every request or denial to  
6 supply information.

7 So I do see it that way.

8 But Mr. Greenbaum's point is this -- and it's a  
9 point I'm thinking about, that there's an intent element. So  
10 would other conduct, if you will -- I'm not judging it bad or  
11 good -- be applicable to show intent with respect to  
12 Johnson & Johnson Health Services? If Biogen or whatever  
13 other company there is is involved in something -- and I  
14 don't know what that is, either -- would that go -- would  
15 that not go towards intent with respect to J&J?

16 MS. SNOW: Well, I think -- well, two things,  
17 Your Honor.

18 The dispute in March was over a wide variety of  
19 requests. We objected to producing documents related to  
20 manufacturers other than Janssen. It was not a limited  
21 objection.

22 But as to your question on intent, SaveOn is not  
23 hiding that it runs a business and it's trying to make a  
24 profit. That is --

25 THE COURT: Right.

1 MS. SNOW: -- very normal --

2 THE COURT: And you want to make more money next  
3 year. And that's okay.

4 MS. SNOW: And we want -- yeah.

5 THE COURT: Yes.

6 MS. SNOW: -- of course. And what is relevant is  
7 the intent relative to Johnson & Johnson. It is not relevant  
8 as to Biogen, as to --

9 THE COURT: Maybe at trial, you're correct. But  
10 insofar as discovery, would that still apply? I am not  
11 saying any of this would be admissible, under any evidentiary  
12 standard, which would be committed to the pleadings, most  
13 likely.

14 But this is discovery. So shouldn't there be a  
15 broader or more circumspect view with respect to intent?

16 MS. SNOW: Well, to the -- I hear what Your Honor  
17 is saying.

18 To the extent they need documents regarding intent,  
19 they have tens of thousands of emails discussing if the  
20 responses to other co-pay -- to co-pay assistance programs  
21 that aren't Janssen. They have general -- we've produced  
22 certainly general documents about business strategy. We've  
23 produced tens of -- or -- I should say thousands of mails  
24 from even the founders of SaveOn to new clients or potential  
25 clients discussing their business model. We've produced

1 thousands of communications to patients.

2 To the -- we've produced -- as Mr. Greenbaum said,  
3 we've produced 140,000 call records of the patient service  
4 representatives speak to patients.

5 To the extent they need to know what SaveOn -- how  
6 it views its business, how it markets its business and its  
7 goals that are relevant, it has those documents.

8 What it lacks and what we believe should not be  
9 produced is its broad financial information, which is  
10 unrelated to Janssen drugs, to the contracts at issue --  
11 again, they've alleged a tortious interference claim, but  
12 it's about the contracts between patients and CarePath, not  
13 patients and every co-pay assistance program on the market.

14 And the information is incredibly sensitive. This  
15 is the kind of information that courts grant protective  
16 orders over for a reason. This kind of information in the  
17 hands of a commercial adversary who has made no bones about  
18 the fact that they are hell-bent on destroying SaveOn, seeks  
19 to use this information -- we don't know why they seek this  
20 information. They want information that is irrelevant to the  
21 case, and we know that they're trying to shut down SaveOn.  
22 That is in their complaint. We know that they -- you know,  
23 we don't know exactly how they intend to deploy this  
24 information, but that is why they want this information.

25 THE COURT: Well, what if it's produced for

1 attorney's eyes only, though? Doesn't that suffice in terms  
2 of protection?

3 MS. SNOW: So, first and importantly, we don't  
4 believe that attorney's eyes only can turn this irrelevant  
5 information into relevant information.

6 THE COURT: Okay.

7 MS. SNOW: We also understand that protective  
8 orders are imperfect. They have shown Your Honor that AEO is  
9 not always the end of the line. And they can use AEO and  
10 show it to their in-house counsel. It might be used to  
11 affect litigation strategy.

12 Remember, this is a \$400 billion company facing off  
13 against a small private LLC. We don't know exactly how  
14 they're going to use it.

15 THE COURT: So, Mr. Greenbaum, did you want to  
16 respond --

17 Were you done, Ms. Snow? I'm sorry. I'll get back  
18 to you too.

19 MS. SNOW: Okay.

20 MR. GREENBAUM: Yes, Your Honor, I did want to  
21 respond --

22 THE COURT: But, wait, wait, wait, wait.

23 So turn to page 7. I'm just curious what that  
24 means to you, page 7 [REDACTED]

25 [REDACTED]

1           So does this tell you that there's some kind of  
2 intent that's illicit, if you will, or untoward?

3           MR. GREENBAUM: Well, I should say untoward. It  
4 shows their plans here. They're going to try to come up with  
5 a way of going around the denials so that they don't disrupt  
6 their business.

7           Their efforts and their nimbleness of trying to  
8 react every time the manufacturers generally are trying  
9 defeat what they're trying to do, which is take money that  
10 doesn't belong to them. Janssen is what JJHCS and the other  
11 manufacturers are doing this to help the patients. Not to  
12 line the pockets of SaveOn and this Express Scripts.

13           And they understand that. So they try to keep  
14 their involvement secret.

15           And they're saying, well, if they catch on and they  
16 deny it, we'll figure out a way of paying them anyway through  
17 a different source.

18           That's what it means. And the fact that it's  
19 Biogen and not JJHCS is really irrelevant because it goes to  
20 their strategy with all manufacturers. We have to show the  
21 harm to the public. And this is showing their intent and  
22 their -- the conduct with all manufacturers is relevant to  
23 showing their intent and proving our case.

24           And I'll give you a further example of we were able  
25 to find a document they produced that precedes this business

1 plan but directly addresses this issue. [REDACTED]

2 [REDACTED] And it says, I'm  
3 reading here from a document, SOSP 300160, and it says -- and  
4 I'll share this with counsel --

5 THE COURT: Go ahead.

6 MR. GREENBAUM: [As read] [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 And then it goes on.

13 They talk about the manufacturer. They don't say  
14 everybody but Janssen or but JJHCS. This is their general  
15 plan. This goes to proving our intent. We're trying to show  
16 how this program works, that their efforts are to circumvent  
17 what we're trying to stop. And these document go to the  
18 heart of showing their intent.

19 Sure. The -- Your Honor is absolutely right. They  
20 are worried about -- we're not a competitor. Yes? We don't  
21 like what they're doing. But we're not a competitor. And  
22 Your Honor properly has said that eyes of counsel only will  
23 protect this information. We previously wanted to share  
24 other information with our clients for business purpose, and  
25 Your Honor said, "No. Don't do that." Well, we're honoring



1 that. And that's how discovery works. We have a protective  
2 order in for that purpose.

3 They're not seeking to claw back this document  
4 which has the numbers in it.

5 So I think the others are clearly relevant, and  
6 they should be produced.

7 Again, we're trying prove the harm to the public in  
8 general, and we have to show their intent. And intent is  
9 relevant to both of our claims. If we can't prove intent,  
10 we're not going to prevail.

11 And that's what discovery is all about, Your Honor.  
12 And these are critical documents to get us there. Thank you.

13 THE COURT: So what does this mean: We reacted to  
14 patient needs by funding these claims through the tertiary --  
15 to keep member disruption to a minimum?

16 MS. SNOW: Yes, Your Honor.

17 Without seeing the document, it's a bit hard to  
18 describe.

19 MR. GREENBAUM: This document is attached to the  
20 joint letter. So it's --

21 MALE SPEAKER: We have --

22 (Simultaneous conversation)

23 MR. GREENBAUM: And, Your Honor, I want to make one  
24 other point --

25 THE COURT: Go ahead.

1 MR. GREENBAUM: -- before she answers. A lot of  
2 this is in code. They're not going to come out in the  
3 business plan and say, "We intend to screw all the  
4 manufacturers."

5 THE COURT: I know.

6 MR. GREENBAUM: So we have to do this, we have to  
7 piece this together with other documents we've seen. And  
8 this is what reveals the intent. We take these general coded  
9 sentences -- like it says, [REDACTED]

10 [REDACTED]  
11 [REDACTED] Then we see a frequently asked question that  
12 says, basically, "Lie. They will then lies."

13 Well, it doesn't say they will then lies in here.  
14 But when we tie that in with the other documents, it shows  
15 the intent. That's why this is so relevant.

16 THE COURT: No. I understand.

17 MR. GREENBAUM: Thank you.

18 THE COURT: And today that's a very familiar  
19 weapon.

20 So explain to me what that means.

21 MS. SNOW: So what this document shows is SaveOn's  
22 goal is to help health plans be able to provide drugs -- or  
23 be able to keep drugs on their formulary. If a co-pay is  
24 denied, part of what SaveOn and the plans that it advises  
25 have promised is that their patients will pay zero dollars

1 for the drug.

2 Now, I just want to be clear that J&J -- the money  
3 for the drugs never goes to the patients. It goes from the  
4 pharmacy to the plans. It doesn't touch the patients at any  
5 point.

6 So what this document is showing is that for Biogen  
7 drugs -- again, not Janssen drugs that are actually at  
8 issue -- that the -- that SaveOn is trying to make sure if  
9 the co-pay is denied at Accredo, that the patient pays zero  
10 for the drug. That's the intent contained in this document.

11 And the intent -- you know, on page 7, which you  
12 pointed to in the business plans, it says, [REDACTED]

13 [REDACTED]

14 [REDACTED] Again the intent  
15 that all of this is showing is to help the patients.

16 And, again, this is showing financial information  
17 related to Biogen which is wholly unrelated to J&J's claims  
18 in this case. It's claims are, again, it's tortious  
19 interference with CarePath contracts regarding the sale of  
20 Janssen drugs. It's that SaveOn violated consumer protection  
21 law by causing stress and confusion to patients taking  
22 Janssen drugs. The damages at issue in this case are that  
23 J&J -- JJHCS paid more in CarePath funds than it intended to  
24 for Janssen drugs.

25 And they have to show this is relevant.

1                   And this is completely unrelated to Janssen drugs.  
2                   And to the extent that, you know, they need to see broad  
3                   strategy, as I said earlier, they have those documents  
4                   already. This is -- these are incredibly harmful financial  
5                   information regarding other manufacturers that has nothing to  
6                   do with CarePath. And that type of harmful information is  
7                   exactly the type in the hands of a commercial adversary --  
8                   Mr. Greenbaum says that J&J is not a horizontal competitor,  
9                   but the law recognizes that you don't need to be just a  
10                  horizontal competitor to be a commercial adversary. And this  
11                  litigation is good evidence that we are commercial  
12                  adversaries. They intend to destroy SaveOn.

13                  MR. GREENBAUM: Your Honor, two points. They are  
14                  correct that the documents will be harmful. It's harmful to  
15                  their litigation because it shows their intent.

16                  And, Your Honor, they argue, well, this may relate  
17                  to Biogen. It really doesn't apply to JJHCS.

18                  That's an argument about admissibility. We say  
19                  it's directly relevant to this case because it shows their  
20                  pattern and practice, how they're running their business to  
21                  deal with all manufacturers, including us. They previously  
22                  said we won't object to discovery that deals with drugs  
23                  generally and all manufacturers, including you. Let them  
24                  argue later on that it's not admissible. But the whole point  
25                  of discovery is we get the documents so we can argue about

1 it.

2 This is not determining -- and as I read to you,  
3 the fact that it may not be admissible is not a reason to  
4 deny discovery. We think this is very relevant. It shows to  
5 intent. Intent is hard to prove. They're fighting because  
6 it is harmful. It's harmful to their case. And that's why  
7 it should be produced -- because we're entitled to it.

8 Thank you.

9 THE COURT: So, Mr. Greenbaum, your request is for  
10 all business plans from 2016 to 2022?

11 MR. GREENBAUM: Correct. It's probably eight to 30  
12 documents -- just guessing. If they do them quarterly or  
13 annually; I am not sure. If it's annual, then there's going  
14 to be six of them. -- or four of them -- five of them.

15 THE COURT: Yeah, I am not concerned with burden.

16 MR. GREENBAUM: Nor were they.

17 And, Your Honor, just to reiterate on page 22, it  
18 goes right to [REDACTED]

19 [REDACTED]

20 That's what this case is about.

21 THE COURT: Yeah. I mean, honestly, I don't know a  
22 lot about the technicalities of other than what you've  
23 instructed me through your writings and argument.

24 But, I mean, it looks like these can go either way.

25 And I think I'm going to reconsider what I forecast

1 and ask that you turn them -- order that you turn the  
2 business plans over for attorney's eyes only.

3 I think Mr. Greenbaum's correct that possibly some  
4 interpretation might go to intent. On the other hand,  
5 cursory review tells me that this is not necessarily so  
6 harmful.

7 I think it is discoverable. I doubt -- and I can't  
8 predict what the district judge is going to do -- that it's  
9 going to be admitted into evidence unless there's some kind  
10 of explosive uncovering of something.

11 But I find that they are relevant and you shall  
12 turn them over, all business plans between 2016, 2022.

13 MR. GREENBAUM: Should we go on to 62 now?

14 THE COURT: You want to give me a breath?

15 MR. GREENBAUM: Yeah, sorry.

16 THE COURT: He's motoring today. Huh?

17 Now --

18 MR. GREENBAUM: I don't want to waste your time,  
19 Your Honor. So we --

20 THE COURT: No. I -- although I've suggested a  
21 special master, I told you last time, I do enjoy these  
22 conversations. So.

23 MR. GREENBAUM: Thank you.

24 THE COURT: I just don't like Friday night  
25 11 o'clock submissions too much.

1 And but Evan says that he did it himself, so I  
2 can't -- you know, I can't get mad then.

3 MR. WOHLFORTH: I said without an associate. I  
4 wasn't -- I was involved with it, and I had the able  
5 assistance of a clerk at the firm.

6 THE COURT: Okay. I just don't want to see some  
7 poor associate at 11 o'clock on a Friday night.

8 MR. WOHLFORTH: Didn't happen, Your Honor. Just --

9 MR. GREENBAUM: That's the decision we made, we  
10 intentionally did not file a response at 11:00. We waited  
11 until Monday morning for that reason.

12 THE COURT: That's good.

13 I have concern for the future of this profession,  
14 which is standing before me, in many respects.

15 So you want to get to 63? That is the corporate  
16 governance documents?

17 MR. GREENBAUM: Yes, Your Honor.

18 THE COURT: And I -- okay. Go ahead.

19 MR. LOBIONDO: Thank you, Your Honor. George  
20 Lobiondo from Patterson Belknap.

21 I'm going to keep my remarks short because there's  
22 actually only one category of documents that's remaining in  
23 dispute, and that's the operating agreements. And we're  
24 asking for these because there's a lot we still don't know  
25 about SaveOn's operations. My friend on the other side

1 described them as a small private LLC.

2           It's true that they're very private. They're made  
3 up of other LLCs and entities. And now that we're in  
4 discovery -- depositions, we don't think that they should be  
5 able to hide behind the corporate form any longer.

6           Now, again, their response is they produced  
7 organizational charts and they produced emails. And that's  
8 true.

9           But their organizational charts don't mention the  
10 entities that are the actual members of the LLC. And for  
11 some of the supposed executives that are on the  
12 organizational charts, it's actually not clear that those are  
13 really the people who are calling the shots for SaveOn or  
14 whether they're just figureheads based on what SaveOn has  
15 produced so far.

16           So before we go into depositions, we want to  
17 understand how SaveOn operates, who the decision-makers are,  
18 and what rules they have set up to govern those processes.  
19 All we're looking to do is establish from very basic facts  
20 about how the defendant in this case functions.

21           Now, the operating agreement in particular is the  
22 key governing document of an LLC. It shows where the real  
23 power is. It will tell us who can bind the LLC. You can ask  
24 for it. There is no justification for SaveOn to conceal that  
25 information at this stage in the case.



1 And, finally, I just want to note that SaveOn seems  
2 to concede again that there would be no real burden to  
3 produce these documents. It's either one document or a  
4 handful of documents. They're essentially stored. They know  
5 exactly what they are. We're just asking for them to produce  
6 it.

7 Thank Your Honor.

8 THE COURT: But so these are documents -- I should  
9 probably ask you -- that would show which person acts in  
10 which position with what -- what am I --

11 MS. SNOW: Yes, Your Honor. So at issue is the  
12 operating agreements.

13 THE COURT: Yeah.

14 MS. SNOW: And as you heard from my colleague, they  
15 want to know who the decision-makers are.

16 THE COURT: Right.

17 MS. SNOW: It shows the agreement between SaveOn  
18 and its member LLCs. And saliently, the point that they  
19 omitted is it shows how distributions are made.

20 So my colleague says that they need to -- they need  
21 to know who the true decision-makers are. We're not trying  
22 to hide anything. They have 20 -- over 20 org charts. They  
23 have almost 30,000 documents from the founders' custodial  
24 files. The president of the company is, in fact, the  
25 president of the company and serves in that regard.

1           What we are -- and why we don't believe we should  
2 produce these documents is that they show the distribution  
3 information to the members. That information --

4           THE COURT: You mean financial distribution.

5           MS. SNOW: The financial distribution.

6           THE COURT: So would that -- would that then --  
7 imply or indicate who a decision-maker is by the basis of  
8 distribution? I mean, I think that's what you're saying,  
9 Mr. Lobiondo.

10          MR. LOBIONDO: Of course.

11          MS. SNOW: And what we would say to that is they --  
12 it cannot be lost on them who the decision-makers are. They  
13 have the documents. They can see in the documents who is  
14 making the decisions. They know who the owners are. In our  
15 Rule 7.1, we explained the member LLCs and who owns those  
16 member LLCs, which takes you back to three owners of the  
17 company, one of who is the president, and one, I believe, is  
18 the managing partner. Those titles have the same meaning at  
19 SaveOn as they do at any other company.

20               They know. They have the custodial files. They  
21 know who is making the decisions. They know how they are  
22 making those decisions.

23               What they don't know is how much of the profits of  
24 SaveOn they're getting. And the only purpose for that  
25 information and why I think they're seeking this document is

1 | they want to know -- they want to be able to embarrass,  
2 | annoy, harass the founders of the -- of the company. And  
3 | they want to know -- again, they want to know the war chest  
4 | that SaveOn has to fight this litigation. That's what's  
5 | really at issue in these documents.

6 | THE COURT: How would they discover the war  
7 | chest -- the litigation war chest through distribution? I am  
8 | not sure I understand.

9 | MS. SNOW: They know what the member LLCs -- how  
10 | much money they have in order to fight this litigation, how  
11 | much SaveOn has in order to fight the litigation.

12 | THE COURT: They don't have that already?

13 | MS. SNOW: Well, with the business plans, they may  
14 | be a little bit closer.

15 | But, no, that is key information. They should note  
16 | be able to take this document -- what they're really seeking  
17 | in this document is is the personal financial information of  
18 | the members. That is what's at -- that's what's at issue  
19 | that this document -- that's why they want this document.  
20 | It's not --

21 | THE COURT: Well, but they would just be getting  
22 | the distribution. That's what you mean by personal financial  
23 | information?

24 | MS. SNOW: Yeah, they know the profits -- they know  
25 | the profits that the members are getting out of the company.

1 They have everything they could possibly need --

2 THE COURT: I want go back to personal financial  
3 information -- because that's of interest to me.

4 So I think what you're saying, Mr. Lobiondo is that  
5 influence is weighted by distribution, w-e-i-g-h-t-e-d.

6 MR. LOBIONDO: Right. So you and I are operating  
7 at a disadvantage because we're never seen these documents,  
8 but it would be very surprising --

9 THE COURT: I never get to see any documents until  
10 Mr. Greenbaum showed me one.

11 MR. LOBIONDO: Fair enough, Your Honor.

12 It would be surprising to me if a governance  
13 document, an operating agreement for an LLC described a war  
14 chest. What this apparently shows is percentages. So, for  
15 example, if the operating agreement says LLC Number 1 gets 99  
16 percent of the profits and LLC Number 2 gets 1 percent of the  
17 profits, that this information that should be turned over in  
18 discovery. Again, it may not be admissible at trial, but  
19 it's going to be extremely probative of who the  
20 decision-makers are, and it's going to potentially  
21 corroborate other information in their productions and --

22 THE COURT: You are going to ask this in  
23 depositions anyhow; right?

24 MR. LOBIONDO: Well, we're going to ask some  
25 questions, certainly, about --

1 THE COURT: No. Just say yes. You're just going  
2 to -- so -- what are you going to do? Object to it?

3 MS. SNOW: Yes, Your Honor.

4 THE COURT: And what's your basis for objection?

5 MS. SNOW: This is completely irrelevant.

6 THE COURT: Not an objection in depositions.

7 Change gears.

8 MS. SNOW: It is harassing -- harassing the  
9 witness.

10 MR. LOBIONDO: It's part of discovery. They're  
11 parties.

12 MS. SNOW: The members are not parties to this  
13 litigation. SaveOn, that is who J&J has the claim against.

14 MR. LOBIONDO: Well, this is a hypothetical  
15 deposition. Who are we talking about deposing? I mean,  
16 that's why we can't decide this now. We don't have a  
17 deponent. We don't have questions. We're flying blind.

18 MS. SNOW: J&J has still not explained how the  
19 percentage of distributions to the partners -- they know the  
20 percentage of ownership.

21 What they don't know is the percentage of  
22 distribution --

23 THE COURT: Okay. They know the percentage of  
24 ownership.

25 MS. SNOW: Yes, it's in the 7.1, I believe.

1 MR. LOBIONDO: No. No. That's -- my understanding  
2 is that that's not accurate. The 7.1 says who the member  
3 LLCs of the LLC are and then who owns those underlying  
4 entities. There's no discussion of distribution of all of  
5 the money they're taking from JJHCS. We don't know how  
6 they're treating it on the back end.

7 THE COURT: Well, the distributions would have to  
8 be in line with the percentage of ownership, so if you had  
9 the percentage of ownership rather than the percentage of  
10 distribution, that would be somewhat less intrusive.

11 MR. LOBIONDO: But, again, Your Honor --

12 THE COURT: It would go -- and -- wouldn't that go  
13 toward the question -- wouldn't that go towards influence, as  
14 you say, in decision-making?

15 MR. LOBIONDO: Well, we need the whole picture --  
16 right? -- because if hypothetically -- I don't think it's  
17 true, but if hypothetically we knew that these two LLCs were  
18 supposedly equal members of SaveOn --

19 THE COURT: Right.

20 MR. LOBIONDO: But it turned out that in, in fact,  
21 one of them was getting all of the money and the other one  
22 wasn't, then it's actually not probative that they are  
23 supposedly equal partners because the money is telling a  
24 different story.

25 And so I don't want to buy into their

1 | characterization that this is all about money, but it's a  
2 | pretty basic governance document that 90 of 100 cases would  
3 | have been the first thing produced. But to the extent  
4 | they're saying any document that has a dollar sign on it or  
5 | talks about money is per se exempt from disclosure, that's --  
6 | we're just not -- we don't have to take their word for it.  
7 | We're entitled to see basic documents about how their  
8 | organization works before depositions.

9 | MS. SNOW: Your Honor, first of all, we've produced  
10 | loads of documents with dollar signs on it. They're not at a  
11 | loss for knowing how much money SaveOn makes relative to  
12 | CarePath. They do not need to know the personal profits  
13 | obtained by the members of this private LLC.

14 | And what I have not heard them address is how the  
15 | distribution -- they say that it goes to the weight one of  
16 | decisions. They have emails showing the decisions getting  
17 | made. They don't need to know the percentage of  
18 | distributions to be able to read the emails that show how the  
19 | three founders are communicating with each other and how  
20 | they're making the important decisions at SaveOn.

21 | THE COURT: Well, but they're not talking about  
22 | just the three founders.

23 | MS. SNOW: That is exactly what they're talking  
24 | about. There are two member LLCs, the parties to these  
25 | operating agreements.

1 As is in the 7.1, it is explained that one of the  
2 two member LLCs is owned by one of the founders. The other  
3 is -- the other's members are the other two founders.

4 What they're really talking about is the three  
5 founders and how the three of them make decisions. And we've  
6 produced --

7 THE COURT: Is that true? This is just --

8 MS. SNOW: -- 30,000 emails.

9 MR. LOBIONDO: We don't know how their organization  
10 operates.

11 What we said is we've looked at their org charts.  
12 We've looked at the emails they produced, and in certain  
13 respects, we don't think the titles of all of their supposed  
14 executives line up with how the decisions are actually made.

15 THE COURT: But there's only three people that  
16 you're talking about insofar as who owns the smaller -- the  
17 LLCs?

18 MR. LOBIONDO: We have no idea. We haven't seen  
19 the operating agreements.

20 THE COURT: If you have no idea, then you're not  
21 communicating.

22 MS. SNOW: Your Honor, it's in the 7.1. It says  
23 exactly the two member LLCs and who are the members of those.  
24 It is two individuals -- I represent to you today that it is  
25 three individuals --



1 THE COURT: In all the LL -- how many LLCs are  
2 there?

3 MS. SNOW: There are two. One of them is -- has  
4 two members who are two of the founding partners. One has  
5 a -- the other LLC has a single member.

6 All of that information is in the 7.1.

7 THE COURT: I was under a misimpression that we're  
8 talking about more than three people and distributions  
9 amongst more than three people.

10 MR. LOBIONDO: The operating, agreements, we  
11 presume, although we haven't seen them, will tell us how  
12 these entities, however many they are, operate; who makes  
13 decisions for SaveOn; when there's a dispute among the LLC  
14 members, who wins; and potentially, according to them, what  
15 the percentages are of who gets what money. But not a war  
16 chest, but --

17 THE COURT: But they're willing to tell you, from  
18 what I intuit from this conversation, the percentages. They  
19 don't necessarily want to tell you the precise numbers of  
20 distribution.

21 Have I misinterpreted your argument?

22 MS. SNOW: Your Honor, we're willing to comply with  
23 Rule 7.1, which we complied with, which is why they know who  
24 our member LLCs are and they know who the founders are.

25 That is what we --

1 THE COURT: But do -- are the percentages written  
2 out as to the LLCs? That's -- just his point is that the  
3 more money somebody gets, the more persuasive they may be.  
4 And he's going to ask this in deposition anyhow. And you are  
5 going to call me, and I'm going to say "Answer the question,"  
6 just so you know.

7 But outside of that, if you give them the operating  
8 agreement so they know the percentage of influence, if you  
9 will -- unless I'm misinterpreting this whole thing -- why --  
10 he doesn't need to know the amount of money they get  
11 necessarily.

12 MS. SNOW: But, Your Honor, based on the business  
13 plans, based on -- they will have the amount of money. They  
14 will be able to calculate it. If they receive the percentage  
15 and they receive the total amount of money, they will know  
16 the personal profits obtained by these founders.

17 MR. LOBIONDO: That's not an argument about the  
18 operating agreements. The fact that the operating agreements  
19 says --

20 THE COURT: Yeah, I mean, the operating agreements  
21 are turned over in initial. He is right about that.

22 MS. SNOW: Not if they're irrelevant. They have  
23 not made any claim relative to the member LLCs, they have not  
24 sued the member LLCs or the founders. They're not -- nothing  
25 in their claim relates to the corporate structure of SaveOn.

1 MR. LOBIONDO: We're just trying to get to the key  
2 decision-makers. We want to have the information about how  
3 the defendant in this case operates before we go into  
4 depositions.

5 MS. SNOW: And, Your Honor --

6 MR. LOBIONDO: It's relevant. I mean, it's  
7 facially relevant.

8 MS. SNOW: Your Honor, and they have it. If you  
9 turn to page 15 of the --

10 THE COURT: I saw that. Organizational chart.

11 MS. SNOW: -- business plan, the three founders are  
12 listed at the top in red.

13 THE COURT: Right.

14 MS. SNOW: They have all the information that they  
15 are seeking except for the information about how much money  
16 those individuals have made from SaveOn. That's what we're  
17 fighting for.

18 MR. LOBIONDO: Your Honor, I don't want to belabor  
19 the points, but I have their 7.1 here. And it says --

20 THE COURT: I thought you were going to offer me a  
21 compromise here.

22 But, go ahead.

23 MR. LOBIONDO: Sorry, Your Honor.

24 So it says that SaveOn is -- has these numbers,  
25 Break Wall Holdings LLC [phonetic] and the members of Break

1 Wall Holdings LLC are two actual humans.

2 And then it also says Net Equity Holdings Inc.  
3 [phonetic] is a Florida corporation and has its principal  
4 place of business in Florida.

5 So, apparently, one of the two members of SaveOn is  
6 a company. All we know about it is that it's in Florida. We  
7 know all of this about there's three owners. I don't know  
8 anything about Net Equity. And they resisted discovery about  
9 it.

10 So in the first instance, we would like to see the  
11 operating agreements, and then presumably that will give us  
12 at least more information than we have today about the key  
13 decision-makers and about who the managing member of the LLC  
14 is.

15 But I don't think -- I mean, the notion that  
16 everything is just black and white if we would only read the  
17 7.1 is not true.

18 MS. SNOW: And I'm not saying they need to stop at  
19 the 7.1. I'm saying look at over 30,000 emails we've turned  
20 over. Look at the organization charts we've turned over.

21 We've said -- I mean, we're not hiding the ball.  
22 What he said when he said the two people on the 7.1 is Jody  
23 Miller and Claudia Dunbar. They're at the top of this  
24 organizational chart.

25 THE COURT: Can you turn over the operating

1 | agreements with a redaction of money?

2 | MS. SNOW: Or percentages, Your Honor?

3 | THE COURT: No, money. I didn't say percentages.  
4 | I said money.

5 | MS. SNOW: But the operating agreements are about  
6 | percentages, and that's what's going to give them --

7 | THE COURT: So there's money in the operating  
8 | agreements. There's no distribution amount?

9 | MS. SNOW: There are certain financial figures --  
10 | of the initial advancement --

11 | THE COURT: This is always like shooting in the  
12 | dark because you don't know what it is.

13 | MS. SNOW: Pardon, Your Honor. There is certain  
14 | financial information about the initial investments into  
15 | SaveOn from the members that have, again, no relevance.

16 | THE COURT: I think it does have relevance because  
17 | certainly that would be an indication of influence. Somebody  
18 | put in a dollar and somebody else put in a hundred dollars, I  
19 | would think the person with the larger investment is the  
20 | bigger decision-maker.

21 | I don't know that. That's for deposition. But I  
22 | don't see what the harm in investment is. I'm saying  
23 | distribution can be redacted.

24 | From what I'm hearing, they have no idea how  
25 | anything operates. And that's not right.

1 MS. SNOW: Your Honor. That's just not true. If  
2 they look at our documents, they know -- we produced over  
3 120,000 documents.

4 THE COURT: Yeah, everybody always says how much  
5 they produce, but I don't -- that doesn't say anything to me.

6 MS. SNOW: Right.

7 THE COURT: I need to know what was produced, and  
8 what was produced that shows them what -- who is the decision  
9 make -- excuse me -- decision-maker and which LLC.

10 MR. LOBIONDO: And based on what they produced, we  
11 don't have the first idea of who Net Equity is. Net Equity  
12 is --

13 THE COURT: He's saying they know it's in Florida,  
14 and that's all they know.

15 I -- you know, maybe you're not talking to each  
16 other again. I'm hearing two different stories.

17 MS. SNOW: Your Honor, to go to the documents, to  
18 go to your prior question as to what we've produced, we've  
19 produced documents of those founders that we're talking about  
20 today, describing how they're going pitch themselves to  
21 clients, how they are going to get new clients, how they're  
22 going to respond to the market.

23 THE COURT: How does that tell me who the  
24 decision-maker is?

25 MS. SNOW: They're showing the decisions.

1 They're -- the documents are showing the decisions of how  
2 they're going to -- what's going to go into the contracts,  
3 how they're going to talk to patients, how they're going to  
4 set up the warm transfer process that Mr. Greenbaum referred  
5 to earlier.

6 THE COURT: How does that tell me who the  
7 decision-makers are?

8 MS. SNOW: It shows who you is actually -- it's a  
9 difference. Looking on an org chart may show you who the  
10 decision-makers are in one way. But emails which show the  
11 decisions actually being made shows you who the  
12 decision-makers are. And they may not be looking at our  
13 documents, but we have produced thousands of those documents.  
14 And this document, the operating agreement has sensitive  
15 financial information about the members --

16 THE COURT: What else other than what they put up?  
17 What other sensitive financial information other than their  
18 investment?

19 MS. SNOW: The distributions.

20 THE COURT: Well, I already told you you can cut  
21 out the distributions.

22 MS. SNOW: But it's the percentages of the  
23 distributions that is sensitive.

24 THE COURT: Well, one or the other is sensitive --  
25 why is the percentage of distribution sensitive?

1 MS. SNOW: It's sensitive because as Your Honor  
2 just ordered the production of the business plans --

3 THE COURT: Right.

4 MS. SNOW: -- they will see the overall profit of  
5 SaveOn. If they take the overall profits of SaveOn, they  
6 will be able, with a percentage, to easily calculate how much  
7 the members are each receiving. Therefore, they will have  
8 their personal financial business. This isn't about SaveOn's  
9 financial information. This is about Claudia Dunbar and Jody  
10 Miller. It's about their financial information. And that's  
11 what we're trying to protect.

12 MR. LOBIONDO: I don't want to belabor the point.

13 We still don't know -- and after that, we still  
14 don't know who Net Equity is. So the notion that we're  
15 supposed to figure out from their emails some entity that we  
16 don't know the first thing about how they play in, doesn't  
17 really make a lot of sense to me, but I can assure you, we  
18 have looked at their emails. And the reason we asked for  
19 these documents is because the representations that are made  
20 in the org charts about who the certain supposed CEOs are.

21 THE COURT: You can delete the financial  
22 distribution. Turn over the operating agreements. If they  
23 figure out how much, then they're going to figure it out.  
24 They're going to ask it in deposition anyhow.

25 And I'm telling you, I only accept privilege



1 objections.

2 MS. SNOW: Yeah, so we will delete the financial  
3 and the percentages. Thank you.

4 THE COURT: No, I didn't say percentages.

5 MS. SNOW: You didn't say percentages? You said  
6 the distribution. Pardon me.

7 THE COURT: Yeah. Okay. I meant the money. Leave  
8 the percentages in.

9 MR. DUNLAP: Thank you, Your Honor.

10 THE COURT: This is discovery. This is crazy.

11 MR. DUNLAP: Your Honor, I think that brings us to  
12 our motion --

13 THE COURT: Your protective order?

14 MR. DUNLAP: No, I think that was covered by what  
15 you already --

16 THE COURT: Okay. Hold on one second, because I  
17 need to check ...

18 Okay. Brings us to.

19 MR. DUNLAP: Our motion to compel answers to  
20 interrogatories and production of documents, Your Honor, J&J  
21 entities other than --

22 MR. MANGI: I'm sorry to interrupt, Your Honor.  
23 Before we go to that, there was the item on the topic about  
24 the protective order application. I think counsel is saying  
25 that he sees that's denied.

1 I just want to make sure we have a clear record.

2 THE COURT: Well, I don't know if I would call it  
3 necessarily denied. I want to take each point piece by  
4 piece.

5 You want any financial information protected, I am  
6 not going to do that.

7 MR. DUNLAP: Well, I think it may be moot at this  
8 point or -- whatever term you want to use.

9 THE COURT: Well, in terms of this particular -- in  
10 terms of 61 and 62, yeah.

11 MR. DUNLAP: The reason we had moved for a  
12 protective order was just because we see consistent requests  
13 by them for financial information that's unrelated to  
14 CarePath --

15 THE COURT: I'll take it one by one.

16 MR. DUNLAP: We heard you. That's why we're moving  
17 on.

18 THE COURT: Okay. And that's not to say I'm never  
19 releasing -- or I'm always releasing, but I've got to take  
20 the piecemeal. It's too big to make blanket rulings on.

21 MR. DUNLAP: Yes, Your Honor. And in the light of  
22 what you just said, I'd like to turn to our motion, which  
23 is --

24 THE COURT: Okay.

25 MR. DUNLAP: -- to compel Johnson & Johnson to

1 answer interrogatories and produce documents from custodians  
2 or individuals who work at Johnson & Johnson but outside of  
3 JJHCS, which is the entity that brought the suit.

4 And our motion is very straightforward. It is a  
5 bedrock fundamental discovery rule that a litigant has to  
6 answer interrogatories based on information within its  
7 possession, custody, or control. And it has to identify  
8 individuals who have documents -- within their possession,  
9 custody, or control.

10 And it doesn't matter in this case if the documents  
11 reside within JJHCS or outside of JJHCS as long as they are  
12 within possession, custody, or control of JJHCS.

13 And JJHCS does not dispute, as far as I understand  
14 it, that they have possession, custody, or control of  
15 documents in other Johnson & Johnson affiliates.

16 But they have simply decided that they are not  
17 going to answer interrogatories based on information outside  
18 JJHCS. They are not going to designate any document  
19 custodians from any company outside of JJHCS. And we take  
20 their letter to say that they haven't done an investigation  
21 or at least not until recently outside of JJHCS. They say on  
22 page 10 of their letter, where we identify certain  
23 individuals outside of JJHCS what appear to have relevant  
24 materials, that they have conducted what they call a  
25 preliminary investigation. That's at the bottom of page 10.

1 If you're following along, Your Honor. It's in the -- right  
2 under the old header. The first sentence.

3 THE COURT: Okay. Go ahead.

4 MR. DUNLAP: Right? Preliminary investigation is  
5 their way of saying they haven't done any investigation  
6 outside of JJHCS up until this point. They simply didn't  
7 want to do it.

8 But we think that could be the end of this motion.  
9 They -- the rules required them to identify document  
10 custodians or individual documents within their possession,  
11 custody, or control to answer with information within their  
12 possession, custody, or control. And they simply didn't do  
13 it. We don't think there's any argument that excuses it.  
14 It's a nonnegotiable baseline discovery obligation.

15 But we think that there is more here, and we put it  
16 in the letter that we think makes their refusal, the  
17 self-help they're engaged in, particularly egregious. There  
18 is substantial evidence that key decisions about CarePath and  
19 issues related to this case were made outside of JJHCS,  
20 specifically at the Janssen division of Johnson & Johnson.

21 And Janssen is the entity that actually makes the  
22 drugs at issue. They're the ones that set the prices for the  
23 drugs. They're the ones that sell the drugs. They're the  
24 ones that get the revenue for the drugs. JJHCS is a service  
25 provider that runs CarePath as part of the marketing arm to

1 | promote the use of these Janssen drugs. JJHCS is not some  
2 | independent division. It does not, as far as we understand  
3 | it, make any products. It simply serves other Johnson &  
4 | Johnson divisions and the clients of those other divisions.  
5 | JJHCS, as far as we know, doesn't even set its own budget.  
6 | Others J&J entities do.

7 |           And in their letter, in response to our portion,  
8 | they admit that there are contacts between JJHCS and Janssen.  
9 | They admit that there are employees who are, quote,  
10 | crossdesignated between Janssen and JJHCS. They admit that  
11 | some of these folks have documents that are relevant -- they  
12 | use the phrase "minimal relevance" -- that's code for the  
13 | documents are relevant.

14 |           And if you look at the documents that we have  
15 | attached to our motion from their very paltry production,  
16 | even those show decisions being made at Janssen about key  
17 | issues. I won't go through them all, but I'm glad to go into  
18 | details. But just a few -- our Exhibit 2 shows a letter to  
19 | patients about the terms and conditions that are issued here.  
20 | A letter being sent out to all the patients who take these  
21 | drugs was, quote, [REDACTED]

22 | [REDACTED]  
23 | [REDACTED]

24 |           Exhibit 33 talks about an FAQ document, a  
25 | frequently asked questions document, being circulated about

1 CarePath. It's [REDACTED]

2 [REDACTED]

3 Exhibit 34, which is about something called [REDACTED]

4 [REDACTED]

5 [REDACTED] It says, [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 And there are additional documents that we've cited  
10 to you as well. And yet they're refusing to do any search in  
11 the first instance of documents from folks outside of four  
12 corners of JJHCS. Their position is "Well, SaveOn has to  
13 come forward and identify specific gaps in the production."

14 But that is flipping the burden. It is a matter in  
15 the first instance, they have the obligation to do the  
16 reasonable search, then to produce documents, and we can go  
17 back and forth on burden, and then we identify gaps. They  
18 want to skip the part where they have to do the reasonable  
19 search in the first instance. But we can't do that. They're  
20 only looking in the JJHCS filing cabinet. They're not  
21 looking in the Janssen filing cabinet sitting right next to  
22 it, and then they're saying, "Well, tell us what's in the  
23 Janssen cabinets, and we'll let you know if it's missing."

24 That's not how it works. They have to -- if  
25 cabinet's within their control, they have to determine if

1 | there are relevant documents within it.

2 |           Now, we do know, from what they've produced, that  
3 | there are big gaps that are missing. And all indications  
4 | point towards Janssen here. So, for example, the terms and  
5 | conditions which they accuse us of inducing people to breach,  
6 | the basis of their tortious interference claim, we know that  
7 | those terms and conditions were modified between 2017 and  
8 | 2022. But we have no documents showing who made that  
9 | decision or why.

10 |           A new terms and conditions were introduced for two  
11 | drugs, beginning in 2022. Again, we don't know who made that  
12 | decision or who approved it. And when the district judge  
13 | decided the motion to dismiss, they held that any issues  
14 | about the meanings of the terms and conditions would be held  
15 | for summary judgment, meaning we should be going after parol  
16 | evidence now. If Johnson & Johnson -- sorry -- Janssen's  
17 | leadership team is signing off on communications about the  
18 | terms and conditions, that strongly infers that they had a  
19 | hand in deciding about introducing these new terms and  
20 | conditions in the first place.

21 |           The budget, they changed the budget for CarePath  
22 | for these two drugs, also starting in 2022. Highly relevant  
23 | to allegations of injury and damages into their allegations  
24 | about the financial viability of CarePath. We have no  
25 | documents showing who made those decisions. And, again, the

1 documents we've shown you indicate that this was decided at  
2 the Janssen level.

3 Also, we have affirmative defenses, including  
4 waiver and laches and mitigation. We have evidence that  
5 Johnson & Johnson knew about the SaveOn program, as they call  
6 it, starting in 2017, but they did nothing for five years.  
7 Nothing.

8 Well, why is that? What did the decision-makers  
9 know? What did the people in the leadership know? Why did  
10 they decide to do nothing about it for five years? Highly  
11 relevant.

12 They have an obligation to search these files in  
13 the first instance and identify the decision-makers for us.

14 Now, in their papers, as they did before, they make  
15 a burden argument is, frankly, a little overstated. They  
16 say, oh, SaveOn wants us to search 200 different divisions,  
17 and they want us to talk to 140,000 employees about anybody  
18 whoever brushed up against a SaveOn -- against CarePath in  
19 any form.

20 That's just nonsense. That's not what we're asking  
21 them to do. They don't need to go search the shampoo  
22 division. Right? They don't need to go search the baby  
23 powder division.

24 We think that certainly the five Janssen entities,  
25 based on what we've shown here, are relevant. Maybe there



1 are some other group that is also relevant here.

2 But the point is that they should know this; not  
3 us. Surely JJHCS knows where its budget comes from. Surely  
4 they know whose approvals they need to seek. Surely they  
5 know whose input and feedback are provided into the  
6 implementation of CarePath. Surely they know how changes to  
7 the terms and conditions come about and if they had to talk  
8 to anybody outside of JJHCS about it.

9 And if, in fact, the responsibility for this is  
10 distributed across different companies or multiple people,  
11 that may be how J&J has decided to set up its business, but  
12 they can't use that complexity to shield critical relevant  
13 documents from us in the first instance.

14 So we hear you loud and clear that you want to deal  
15 with things one by one as they come up. And I think they're  
16 going to try to use that to say, oh, have them identify a  
17 specific gap. Let's negotiate about specific custodians.

18 But we're at the threshold step. They've had to  
19 identify who has relevant material in the first instance.  
20 They had to provide answers to interrogatories based on stuff  
21 in their possession, custody, or control, and they have  
22 failed to do that. They should answer the interrogatories.  
23 They should identify people that have relevant documents.  
24 Then we can meet and confer about a reasonable search, about  
25 search terms, and they say there's nothing unique; right?

1 Well, they'll run the search terms, and all the documents  
2 will be duplicative, and they won't have much to search.

3 THE COURT: And that's exactly what I meant by  
4 taking it point by point.

5 MR. DUNLAP: Exactly.

6 But we think they haven't gotten off point one --

7 THE COURT: Okay.

8 MR. DUNLAP: -- in this, which is why we're asking  
9 for them [sic] to grant this motion to compel.

10 And when you do, we are glad to work with them as  
11 promptly as we can.

12 Thank you.

13 MR. SANDICK: Your Honor, I'd like to address a few  
14 things that Mr. Dunlap said that are not well supported.

15 The first point here is that we have answered the  
16 interrogatory, and we have done a good-faith search. And we  
17 have determined that the individuals who are responsible for  
18 managing the CarePath program are within JJHCS, number one.

19 Number two, throughout their letter, they make  
20 reference to people, and they say, "This person is in JJHCS.  
21 This person is in" -- and more than half the time, they're  
22 incorrect. The documents that they've supported do not show  
23 the decisions being made by people within Janssen. What they  
24 show is people in Janssen either providing information to  
25 JJHCS about a particular drug or about a particular issue

1 relating to a drug, or they show people being advised of what  
2 is happening within JJHCS.

3 The idea that we have ignored the interrogatory, we  
4 haven't done an investigation is false. It's a canard. This  
5 is not accurate.

6 What is underlying the problem here, Your Honor, is  
7 the total failure by counsel for SaveOn to engage in  
8 meet-and-confer on these issues. On May 9th, they sent us a  
9 letter and asked about a number of custodians. We wrote back  
10 about a week letter and said, "We'll give you one of those  
11 custodians. The others, we don't think they're relevant.  
12 This is why."

13 And what we expected -- that was May 19th -- was  
14 that we would hear from them in a week or two saying, "Well,  
15 maybe these people are relevant. Here are some other ideas,"  
16 and have a back-and-forth.

17 THE COURT: And then you would bring it to me.

18 MR. SANDICK: And then we would bring it to you if  
19 there wasn't an agreement.

20 But instead on June 16th, on a Friday night, we got  
21 a letter saying we accept your offer of one custodian. And  
22 then on Juneteenth at about 8 or 9 o'clock at night, we got a  
23 letter proposing to come here on issues that we have never  
24 discussed even once. In fact, Mr. Dunlap even today  
25 continues to violate the basic rule of meet-and-confer

1 conferral by a good-faith meet-and-confer conferral. For  
2 instance, he talked about waiver and laches issues. That has  
3 never once been raised in a phone call with me relating to  
4 this joint letter. It's not even in the joint letter. It's  
5 completely new for Your Honor today.

6 The terms and conditions issues that he mentioned,  
7 I'm shocked to hear Mr. Dunlap talk about that when I spoke  
8 to him for an hour on Friday and with an associate, we took  
9 down all of the things he asked us to look at on  
10 meet-and-confer for terms and conditions, and now he's here  
11 saying we haven't complied with our discovery obligations on  
12 meet-and-confer. We're still in the middle of talking to him  
13 about these things.

14 So the idea of coming here and saying, number one,  
15 that we haven't conducted an investigation -- not true. He  
16 has misquoted what we said in this letter, and I want to read  
17 in full what we said, to correct the record.

18 We said, [As read] As to the specific seven  
19 individuals whom SaveOn SP identifies in this letter, JJHCS's  
20 preliminary investigation has realized each is of minimal or  
21 no relevance to the claims and defenses.

22 Why was there a preliminary investigation? Because  
23 a couple of these people we had literally never heard  
24 mentioned until we got the joint letter on the night of  
25 Juneteenth, on June 19th. And so, yes, we didn't fully

1 investigate specific names of people that we didn't know he  
2 wants us to look into. If we engage in meet-and-confer, I  
3 think we can make progress. We already offered them one  
4 custodian. We'll possibly offer more if circumstances  
5 justify. And if not, we'll come back to Your Honor, and  
6 you'll decide what do.

7 But the idea that they can say, "Well, for these  
8 six or seven people, we think they're relevant," and based on  
9 that, you now have to go -- we talked about Janssen. Janssen  
10 isn't one entity. Janssen is many different entities. You  
11 now have to go and consider all sorts of other possibilities.  
12 There's no functional way to do that. At the start of the  
13 case when JJHCS became the plaintiff and filed the lawsuit,  
14 that was based itself on an extensive investigation, that the  
15 evidence of wrongdoing and the evidence of harm was at JJHCS  
16 and not at some other entity within the vast business that  
17 is, you know, Johnson & Johnson, writ large.

18 I can talk about other issues. But I think really  
19 what the Court should do is deny the very broad requests that  
20 we go throughout the entire Janssen or Johnson & Johnson  
21 Enterprise and, instead, tell them to give us time --

22 THE COURT: He doesn't want you to go through the  
23 entire enterprise.

24 You said there were several Janssen entities, and I  
25 thought that you said, Mr. Dunlap, that you knew which

1 entities to go through, which I am not quite sure that you  
2 do.

3 MR. SANDICK: So, Your Honor, let me address that.  
4 A couple of things, they mentioned something called "JALT,"  
5 which is the Janssen Americas Leadership Team. JALT is  
6 composed of people who do lots of different things within the  
7 Janssen or Johnson & Johnson companies. One of the members  
8 of JALT, one of the 20 members, is someone named Katie Mazuk.  
9 Her role is, among other things, is to supervise CarePath.  
10 So if there are distributions to the JALT team, which is a  
11 20-person team, Katie Mazuk, a custodian in this case, we've  
12 produced documents from her, she would get those documents,  
13 if there are distributions to JALT or by JALT. We have a  
14 JALT custodian in this case.

15 There are other people in JALT who have absolutely  
16 nothing to do with CarePath. And other than speculation, we  
17 haven't heard anything. So they picked Scott White. Why  
18 have they named Scott White in their letter?

19 THE COURT: So why didn't you talk to each other  
20 about that and then present your various sides to me?

21 MR. SANDICK: I raised this with Mr. Dunlap on  
22 Friday.

23 THE COURT: Okay.

24 MR. SANDICK: And said, "I'm surprised that you're  
25 going to court on this. We haven't had a chance to meet and

1 confer."

2 And he said, "Are you willing to do what I said in  
3 the letter?"

4 I said, "No. I thought we'd have a discussion  
5 where we talk about custodians and work this thing through."

6 THE COURT: A discussion means a discussion,  
7 though.

8 MR. SANDICK: Right.

9 THE COURT: Not no and yes.

10 MR. SANDICK: That's right. And we have not had  
11 that discussion to go through -- again, some of the names in  
12 this letter, we were -- you know, we were criticized, let's  
13 say, for not having Donna -- and someone named Karen Laib  
14 [phonetic].

15 The first time that I heard Karen Laib, who she  
16 was, that there was an issue with her, was when I got their  
17 letter on the night of Juneteenth.

18 THE COURT: Okay. Can I say this without making a  
19 ruling? I really don't think these issues are fully  
20 explored. I think you need to meet and confer. And you can  
21 bring to me each one -- wait, Ms. Snow has something to say.  
22 Go ahead. You can pass the note. I want to know what it is.

23 I got the sense just from the submission that  
24 exhaustion of conference hasn't been had.

25 Am I wrong?

1 MR. DUNLAP: Well, I think you are. I'm glad to  
2 address the meet-and-confer --

3 THE COURT: And there can't be any stonewalling.  
4 Meet and confer means, you know, the "C" word, compromise of  
5 some sort.

6 MR. DUNLAP: Yeah, well, I think opposing counsel's  
7 conflating two different things.

8 THE COURT: Okay.

9 MR. DUNLAP: So there are definitely topics where  
10 the parties are still meeting and conferring about whether or  
11 not Johnson & Johnson needs to produce additional documents;  
12 things about time frames; things about additional search  
13 terms; things about additional topics.

14 We did meet and confer, as Mr. Sandick said, about  
15 terms and conditions last week. There are a number of holes  
16 in their production about financial information where we  
17 think they're holding stuff back -- or those topics, we agree  
18 we need to meet and confer on --

19 THE COURT: Okay.

20 MR. DUNLAP: -- specifically and come to you.

21 If that's all we were talking about, we would not  
22 have brought this.

23 The parties' agreements about a threshold question  
24 about whether they had to do a search of entities outside of  
25 JJHCS in the first instance and answer our interrogatories



1 and identify potential document custodians, and they simply  
2 haven't done that, and --

3 THE COURT: Stop.

4 What's your answer to that?

5 MR. SANDICK: My answer is that at the start of the  
6 case and throughout discovery, we have done a good-faith,  
7 reasonable search to try to determine --

8 THE COURT: What does that mean, good faith,  
9 reasonable? I don't know what that means.

10 MR. SANDICK: Sure, it means a few things. Number  
11 one, it means I've talked to my client and not just me, but  
12 others on the team. We've spoken to people to try to figure  
13 out who is involved in the operation of CarePath.

14 Secondly, we've reviewed many documents and looked  
15 there to see if there were unique responsive documents  
16 outside of the group of custodians that we have identified.  
17 Again, beginning with Katie Mazuk, who is the person who is  
18 really the head of JJHCS for CarePath purposes, her documents  
19 have been produced.

20 Seventeen other custodians, close to 20,000  
21 documents.

22 And we've gone through these things. We don't  
23 just, you know, stamp them with a number and send them out.  
24 We reviewed them and studied them and give thought as to  
25 whether we need to do more.

1 I'm always open to hearing that there is some gap.  
2 But we've taken these steps already.

3 THE COURT: Tell him what you want.

4 MR. DUNLAP: Sorry?

5 THE COURT: Tell him what you want.

6 MR. DUNLAP: Well, what we want them to do is the  
7 reasonable investigation they should have done at the  
8 beginning, and we disagree that what they did was reasonable.

9 And I think you should listen very carefully to  
10 what Mr. Sandick's saying and what they wrote in their letter  
11 about this, because they say, "Oh, we conducted a reasonable  
12 investigation." They don't say that they conducted an  
13 investigation outside of JJHCS, that they went and they  
14 looked at other entities, including Janssen, to see if there  
15 was relevant information.

16 THE COURT: Did you look at Janssen? Stop. One  
17 thing at a time.

18 MR. SANDICK: We looked at JJHCS documents in order  
19 to determine whether we needed to go and collect and review  
20 documents from Janssen. Based on our review, we did not  
21 determine that going, let's say, to somebody who's the head  
22 of Janssen North America's files was necessary simply because  
23 he once got an email that had a presentation from SaveOn. We  
24 didn't think that was necessary. We thought that was, you  
25 know, gilding the lily, so to speak.

1 THE COURT: How do I make this decision without you  
2 two speaking to each other?

3 So you think that there are -- there's more  
4 investigation into some of the Janssen entities that's  
5 necessary.

6 MR. DUNLAP: Well, I think you just heard  
7 Mr. Sandick acknowledge that they did not conduct a search  
8 out of --

9 THE COURT: Right.

10 MR. DUNLAP: -- outside JJHCS. They looked at  
11 those documents, and they stopped.

12 And he says, well, we -- but that is because a lot  
13 of have the operations about CarePath are within JJHCS.

14 THE COURT: Right.

15 MR. DUNLAP: But we need documents about decisions  
16 and approvals, and we've shown you materials indicating that  
17 those approvals and those decisions are made at Janssen, not  
18 at JJHCS, and they're big gaps in their production, because  
19 we don't have those approval documents.

20 And it's very interesting to hear them, after  
21 spending all this time saying they need our decision-makers'  
22 documents, to basically say, well, hold on a second, we've  
23 decided that just because we sent somebody an email, that's  
24 not enough to go after them.

25 Well, if they made decisions, if there were

1 | approvals, we need to know. And they're telling you they  
2 | haven't done that.

3 |           Now, they also say that -- they say, well, even  
4 | operational decisions were made at CarePath, but they don't  
5 | say that other signoffs are required for that. And we've  
6 | shown you documents indicating that approvals, feedback, all  
7 | the rest of that is at issue.

8 |           We are glad to meet and confer with them once they  
9 | take the first step.

10 |           THE COURT: Okay.

11 |           MR. DUNLAP: -- which is -- and to -- and just to  
12 | be clear, I don't see how any of this excuses them from  
13 | answering our interrogatories, which is to simply --

14 |           (Simultaneous conversation)

15 |           MR. DUNLAP: -- if I could finish.

16 |           Which is simply to identify people with knowledge.  
17 | Their interrogatories they say won't give us information from  
18 | people outside of JJHCS. They answer on behalf of JJHCS, and  
19 | they identify people of one vendor named TrialCard. But they  
20 | don't identify anybody outside of JJHCS at Janssen.

21 |           I don't see how this is possible.

22 |           Reasonable investigation has to take place. Now,  
23 | we can talk about this, but the decision -- we did, in fact,  
24 | meet and confer with them about this -- meet and confer with  
25 | them about this extensively at the beginning of the year.

1 THE COURT: Okay.

2 MR. DUNLAP: Which was you should go and look at  
3 outside of JJHCS.

4 And they said, "No. We're not going to do it."

5 We moved to compel on this back in February.

6 They said, "Well, why don't you wait until our  
7 document production comes in," and then we can renew.

8 You said, "Fine."

9 Now, on specific topics, terms and conditions,  
10 finances, we're meeting and conferring with them about the  
11 specifics.

12 But this is a threshold issue. They haven't  
13 changed their position. They've acknowledged to you that  
14 they haven't gone and searched outside of JJHCS. They have  
15 to do that if there's a reason to believe that there are  
16 relevant documents there.

17 And we've shown you a basis in their own documents  
18 that there were approvals and decisions being made about  
19 CarePath at Janssen. We don't need them to go search in  
20 every corner of this company.

21 THE COURT: Okay.

22 MR. DUNLAP: But they have to do that reasonable  
23 search, and then we're glad to meet and confer about  
24 custodians and search terms and burden and all the rest of  
25 that.

1 MR. GREENBAUM: We've done that work, Your Honor.

2 THE COURT: You said you've done it with J&J and  
3 you found nothing relevant or one piece of paper that you  
4 made reference to, relevant to anybody in Janssen.

5 MR. SANDICK: Nothing, no -- no unique responsive  
6 documents that I know of that are outside of the JJHCS  
7 entity. We have spoken to people at JJHCS. We've spoken to  
8 people who also do work for Janssen as well -- in order to  
9 try to determine who the right custodians, who the  
10 decision-makers for this case.

11 And what we've come up with is what's led to our  
12 production of documents, the 17 different custodians.

13 When we were here in March --

14 THE COURT: Mr. Dunlap wants to know why you didn't  
15 go to Janssen directly, why did you just rely on Johnson &  
16 Johnson and their reference or documents that reference  
17 Janssen?

18 MR. GREENBAUM: Well, here's what I would say.  
19 There are thousands of employees, tens of thousands of  
20 employees, even within the various Janssen entities that  
21 exist, most of whom have absolutely nothing to do with any of  
22 this.

23 What he has done is he has --

24 THE COURT: Well, he says that you know there are  
25 several Janssen entities that were involved in some amount of

1 decision-making with J&J.

2 MR. SANDICK: I don't think that's right. He's  
3 identified JALT as the primary focus, the Janssen Americas  
4 Leadership Team.

5 One of the people who is in JALT is Katie Mazuk --

6 THE COURT: Right. You said that.

7 MR. SANDICK: -- also -- right.

8 And so that is our window into JALT.

9 THE COURT: What do you want him to do?

10 MR. DUNLAP: We want them to do a full  
11 investigation of documents within the possession, custody, or  
12 control, specifically at Janssen -- maybe there's some other  
13 entity involved as well --

14 (Simultaneous conversation)

15 THE COURT: And how do you want them --

16 MR. DUNLAP: -- we don't know because they won't  
17 tell us.

18 THE COURT: How do you want them to do that?

19 MR. DUNLAP: Well, they should start by talking  
20 with the folks at -- excuse me -- JJHCS.

21 THE COURT: Janssen?

22 MR. DUNLAP: No, no. First at JJHCS.

23 THE COURT: They did that.

24 MR. DUNLAP: Where does your budget come from? Who  
25 do you have to speak with outside of JJHCS to get approvals?

1 Who convenes meetings about this? What is decisions --

2 THE COURT: Are there interrogatories that are  
3 targeted towards that?

4 MR. DUNLAP: Yes, we've asked them who have  
5 knowledge of these things?

6 And they've said, "We're only answering within  
7 JJHCS, not about Janssen."

8 THE COURT: Did you say that?

9 MR. SANDICK: Because the answers lie within JJHCS.  
10 They framed the interrogatories as anyone within all of  
11 Johnson & Johnson.

12 And we said we're not doing an investigation  
13 through 140,000 individuals and employees and 200 different  
14 entities. We're going to give you answers from JJHCS.

15 And we told them to meet and confer, that if the  
16 arrows pointed elsewhere, that if there was reason to think  
17 that there is -- you know, unique responsive materials  
18 elsewhere, we're open to that. We're not refusing to do  
19 that.

20 But we haven't seen the evidence of that.

21 And what they've offered in this motion is not the  
22 evidence of it. Even down to bare facts -- like they have --  
23 they say, "Look at these seven people. These are all  
24 non-JJHCS employees."

25 And they're wrong. Most of them do work for JJHCS.



1 One of them is such an incredibly senior person within the  
2 company that all they can do is say, "Well, who knows? Maybe  
3 he has something. He once got one email attaching the  
4 presentation and video."

5 If he responded to that, he didn't respond to Katie  
6 Mazuk, who is the person who would have been -- the logical  
7 person for him to talk to about it because she's in charge of  
8 making sure that JJHCS functions well.

9 So we are open to meeting and conferring. But  
10 putting it in a joint letter for the first time --

11 (Simultaneous conversation)

12 THE COURT: I don't what to do here because --

13 (Simultaneous conversation)

14 THE COURT: -- you're -- Tim, you've got any ideas?

15 MR. DUNLAP: Can I respond quickly to two points?

16 THE COURT: Yeah, but -- you're crosstalking. I  
17 don't --

18 MR. DUNLAP: Because there's a fundamental  
19 disagreement about whether they need to do a search outside  
20 of JJHCS.

21 And everything you hear him is in this very --

22 THE COURT: I know, but --

23 (Simultaneous conversation)

24 MR. DUNLAP: -- way to say, no, we're not going to  
25 do that --

1 (Simultaneous conversation)

2 THE COURT: But what's being said is that, we have  
3 to start with Johnson & Johnson, and if we find that there's  
4 nothing with Johnson & Johnson that leads to Janssen, why  
5 should we go to Janssen?

6 MR. DUNLAP: Because there's --

7 THE COURT: And the very -- that's not even a  
8 syllogism, but in a very simple way, is that what I'm  
9 understanding you to say?

10 MR. SANDICK: Yeah, that's basically it. If  
11 JJHCS -- if we see in the documents of the people who  
12 actually oversee and manage and run CarePath, if we see  
13 arrows pointing out that make us think, there should be  
14 unique documents -- in other words, not going to someone  
15 within Janssen because they will have the same emails that  
16 we've already collected from JJHCS but because they're likely  
17 to have done something sort of, so to speak, behind JJHCS's  
18 back.

19 And we actually did give them one of the custodians  
20 they asked for on May 9th. We thought we would have further  
21 discussions along these lines.

22 THE COURT: I'm willing to give you what you want,  
23 but I'm not sure what it is.

24 You want them to search certain Janssen entities.  
25 Which ones?

1 MR. DUNLAP: Well, this is the problem, Your Honor.  
2 We don't know all of the Janssen entities --

3 THE COURT: And I certainly don't know.

4 MR. DUNLAP: The JALT is certainly involved, that  
5 we've shown you those documents.

6 THE COURT: Well, he said one person in JALT has  
7 involvement.

8 MR. DUNLAP: He said that one person has  
9 involvement. But the very person he was talking about, Scott  
10 White --

11 THE COURT: Right.

12 MR. DUNLAP: -- he says, oh, all he did was get a  
13 copy of something.

14 No, he convened a meeting in December of 2021 about  
15 co-pay adjustment programs. He convened that meeting weeks  
16 before they changed their terms and conditions and their  
17 budget for two of the drugs at issue.

18 They haven't done an investigation, by all  
19 accounts, to show who the actual decision-makers and approval  
20 folks were. And we think this shouldn't be that complicated.  
21 If you work at JJHCS, you have to know where your budget  
22 comes from and who's setting the CarePath budget. You have  
23 to know whose approvals you need to seek, who -- which  
24 higher-ups have called you and asked you to participate in  
25 meetings. We don't see why this is so hard --

1 (Simultaneous conversation)

2 THE COURT: Can you answer these questions?

3 MR. SANDICK: We --

4 (Simultaneous conversation)

5 MR. DUNLAP: -- and --

6 MR. SANDICK: Sorry. Do you want it answered? Or  
7 should I wait for --

8 THE COURT: Well, I know what you want. I don't --  
9 you're not responding to what he wants other than to say we  
10 have gone to -- hold on. I might have some wisdom coming  
11 back.

12 (Pause in proceedings)

13 MR. DUNLAP: The one other point I was going to --

14 THE COURT: It's okay.

15 MR. DUNLAP: The one other point I was going to  
16 make, just to get it on the table, their cries of burden,  
17 we're not --

18 THE COURT: I don't want to hear burden. I am not  
19 listening to burden today. It's not -- it's -- you can't  
20 talk to me, either side, about burden.

21 And I don't want to hear 20,000 or 30,000 pages.

22 I want a path so that they can be satisfied that  
23 you've contacted Janssen entities -- I don't know the  
24 logistics. I don't even know, really, what it is that they  
25 need, but -- who makes budgetary decisions, who has input in

1 decision-making, basic information that you say you gave them  
2 from J&J and that Janssen has no involvement in.

3 MR. SANDICK: That -- I think that the documents  
4 that we have collected are the -- are the responsive  
5 documents in this case, that if we go to other entities, we  
6 are not going to find unique documents. We're going to find  
7 things that have already been produced.

8 THE COURT: But you want them to go to Janssen -- I  
9 mean, to Janssen.

10 MR. DUNLAP: He's saying they haven't done the  
11 investigation.

12 MR. SANDICK: No, that's not at all what I'm  
13 saying --

14 (Simultaneous conversation)

15 MR. DUNLAP: They have -- if I could --

16 MR. SANDICK: But you keep misstating what I'm  
17 saying, Mr. Dunlap.

18 I've said six times we did the investigation. You  
19 don't like the answer from the investigation, and so you  
20 filed a joint letter without any meet-and-confer --

21 THE COURT: Well, he doesn't think you went far  
22 enough.

23 MR. DUNLAP: Your Honor, I'm glad to address him  
24 directly, but I think you'll probably want me to direct my  
25 comments to you.

1 THE COURT: Okay.

2 MR. DUNLAP: Right.

3 THE COURT: That's my bad. Go ahead.

4 MR. DUNLAP: He has acknowledged that they haven't  
5 done a search outside of JJHCS.

6 What he said -- and this is consistent with the  
7 letter, is they talked to people within JJHCS --

8 THE COURT: Right.

9 MR. DUNLAP: -- and based on that, they don't think  
10 they have go outside of JJHCS, and that's reasonable.

11 THE COURT: Yes.

12 MR. DUNLAP: And our answer -- our response is  
13 that's not reasonable. If you know that Janssen and JJHCS  
14 are wound up this way, you know that people are  
15 crossdesignated. You know that they work together. You know  
16 JJHCS runs CarePath for Janssen. You have indications in  
17 your very documents that Janssen people are approving things  
18 relating to CarePath. You have to then go to Janssen -- I  
19 don't know how many people it is or how they instruct their  
20 organization, but you have to do a reasonable investigation  
21 and figure out who are the people who actually have  
22 approvals, inputs, substantive knowledge of this.

23 And how he can say there are no unique documents  
24 when they haven't done the search is a little bit beyond me,  
25 especially when a search only of JJHCS would not capture any

1 internal documents at Janssen by these decision-makers about  
2 the decisions that they are making.

3 We think this is a square one fundamental issue.  
4 Do the investigation that you should have done months ago.  
5 Answer our interrogatories. We don't see why that is a  
6 burden. Identify people who have relevant documents.

7 And then if you want to talk about duplication or  
8 cumulativeness or the burdens or the rest of it, we can then  
9 negotiate. But until they move off of square one, they're  
10 asking us to identify gaps in a production they haven't made  
11 and a search they haven't done.

12 MR. SANDICK: Your Honor --

13 THE COURT: What if he issues a third -- this is  
14 Duva wisdom. What if he issues a third-party subpoena to  
15 Janssen?

16 MR. SANDICK: I would have to see it. I understand  
17 what Mr. Duva is suggesting.

18 THE COURT: Well, wouldn't it be better that you do  
19 this collaboratively rather than starting to get into that?  
20 I didn't mean to suggest that that's what you should do to  
21 get the information. But --

22 (Simultaneous conversation)

23 MR. SANDICK: The point that I'm making,  
24 Your Honor, is that -- is that what Mr. Dunlap is using, you  
25 know, fairly neutral terms. Like, just go look at Janssen --

1 THE COURT: Right.

2 MR. SANDICK: -- there are so many people who work  
3 at Janssen, thousands of people --

4 THE COURT: But he wants crossovers. So -- and  
5 he's named this White person --

6 MR. DUNLAP: Scott White is one of Janssen's --

7 (Simultaneous conversation)

8 THE COURT: -- as a crossover --

9 (Simultaneous conversation)

10 MR. SANDICK: He's an apex -- he's an apex witness,  
11 Your Honor. He is the only connection --

12 THE COURT: Oh, was that the answer to the  
13 interrogatory? That is an apex?

14 MR. SANDICK: No. The answer -- that is the  
15 answer --

16 THE COURT: Because then I get to determine whether  
17 he's an apex.

18 MR. SANDICK: That's an answer to the question of  
19 is this someone who's likely to have unique documents?

20 He is the head of this 20-person group that  
21 oversees a million different things. One of the very small  
22 things that that group oversees happens to be CarePath.

23 The person on JALT who actually oversees CarePath  
24 is, of course, a custodian. I'm sure they'll depose her.  
25 And they can ask her the questions that Mr. Dunlap is talking



1 about.

2 THE COURT: Well, you see, here's the other side of  
3 this, and this probably won't help you to do what you have to  
4 do. But, you know, I ordered them to give, with a wide  
5 berth, relevant documents. And I'd like you to do the same.

6 MR. SANDICK: I think we have, Your Honor.

7 THE COURT: I know that you think you have.

8 But Mr. Dunlap doesn't think that you have, and his  
9 issue is not that large. It's why can't you go to Janssen  
10 and find out about these crossover people or related  
11 J&J/Janssen decision-makers.

12 So you are telling me nobody in Janssen has  
13 anything that that would be applicable to a CarePath  
14 decision?

15 MR. SANDICK: What I'm saying is that we have done  
16 that work, and we have identified the people who make those  
17 decisions are the custodians in this case; that it is not  
18 someone --

19 THE COURT: But there's only one you've agreed to.

20 MR. SANDICK: Well, there's only one we've agreed  
21 to. The others were sort of thrown at us in the joint letter  
22 process.

23 So I would also just say that to -- to come out of  
24 this and order us to do something where there's been no  
25 meet-and-confer, I think also incentivizes future disputes to

1 | be resolved along these lines --

2 | (Simultaneous conversation)

3 | THE COURT: I don't know if we're the tail or the  
4 | dog, because then we're back to the custodian issue.

5 | But I think that his issue is preliminary.

6 | MR. DUNLAP: Yes, and if I could speak to that,  
7 | Your Honor, we're really not trying to sandbag them or slip  
8 | anything by. We've spent a lot of time meeting and  
9 | conferring about lots of things. And we are still meeting  
10 | and conferring about things like terms and conditions --

11 | (Simultaneous conversation)

12 | THE COURT: Right. But you want the --

13 | (Simultaneous conversation)

14 | MR. DUNLAP: We understood there so be --

15 | (Simultaneous conversation)

16 | THE COURT: -- further investigation into Janssen  
17 | to see whether or not --

18 | MR. DUNLAP: Yes, we want them to do a reasonable  
19 | investigation into Janssen. If there's some other entities  
20 | involved --

21 | THE COURT: But that's a general --

22 | (Simultaneous conversation)

23 | MR. DUNLAP: -- they can do that. But Janssen is  
24 | key --

25 | (Simultaneous conversation)

1 MR. DUNLAP: Right. It's a general they should  
2 point -- right? -- which is this is what they're supposed to  
3 do at the beginning. We don't think they did what they were  
4 supposed to do.

5 They need to answer --

6 (Simultaneous conversation)

7 THE COURT: This is so circular --

8 (Simultaneous conversation)

9 MR. DUNLAP: -- they need to answer their  
10 interrogatories and identify people with knowledge at  
11 Janssen, which is something they're refusing to do. They  
12 need to identify people at Janssen who may have relevant  
13 documents, even if they think they're cumulative. Identify  
14 those people, which they've refused to do. And then we can  
15 meet and confer about specific individuals.

16 But we can't do the meeting and conferring before  
17 we do the reasonable investigation.

18 And it's a little bit head-snapping, because on the  
19 one hand, they're telling you nobody outside of JJHCS, we  
20 think, has nothing to do with CarePath, and so many people  
21 outside of JJHCS might have something to do with CarePath, it  
22 would take us a huge amount of time to figure out who they  
23 are.

24 Well, both of those things can't --

25 THE COURT: How does he do an investigation? He

1 goes to Janssen or sends out an email saying, "If you have  
2 any relationship with CarePath, contact me"?

3 MR. DUNLAP: I mean, I think it would be two  
4 things. You would interview folks within JJHCS about people  
5 at Janssen, maybe other entities --

6 THE COURT: He said he did that.

7 MR. DUNLAP: Well -- but --

8 (Simultaneous conversation)

9 MR. SANDICK: We did that --

10 (Simultaneous conversation)

11 MR. SANDICK: We did that.

12 MR. DUNLAP: Well, but they did -- but then it's  
13 very hard for them to explain, I think, the documents we just  
14 showed which show people -- which show that the Scott White,  
15 the chairman or the -- one of the head folks on the JALT  
16 convening a meeting about co-pay assistance. And --

17 THE COURT: What about that specifically?

18 (Simultaneous conversation)

19 MR. SANDICK: Sure, a meeting on co-pay assistance  
20 at which a custodian in this case was a -- would have been  
21 the key person because she's the person in charge of  
22 CarePath.

23 THE COURT: Now, we're back to Scott White's being  
24 an apex.

25 MR. SANDICK: Scott -- this is -- you know, because

1 | there's a meeting invitation that emanates from the email,  
2 | who knows it's even him or his secretary who sends it out --

3 | THE COURT: Well, they're asking you to find out.  
4 | That's the very point.

5 | MR. SANDICK: But the point is --

6 | (Simultaneous conversation)

7 | MR. DUNLAP: It says other things -- I'm sorry --

8 | (Simultaneous conversation)

9 | MR. SANDICK: -- the fact that there's a meeting  
10 | that Scott White calls, if there are documents relating to  
11 | that meeting that go through a JALT distribution list, they  
12 | would be in the documents that we've reviewed and produced  
13 | where responsive because someone on JALT is a custodian in  
14 | this case.

15 | It can't be the case, Your Honor, that 20 members  
16 | of JALT all have to become custodians because there was once  
17 | a meeting held that touched on --

18 | (Simultaneous conversation)

19 | THE COURT: But he's not saying that.

20 | MR. DUNLAP: Exactly.

21 | MR. SANDICK: I think he is saying that.

22 | MR. DUNLAP: What we're saying --

23 | (Simultaneous conversation)

24 | MR. SANDICK: His letter says exactly that --

25 | (Simultaneous conversation)

1 THE COURT: He's saying he doesn't believe that you  
2 did your due diligence with respect to any Janssen people --

3 MR. SANDICK: He should come forward with specific  
4 document issues, just as we have.

5 THE COURT: He did. He did. He said,  
6 decision-making, budget, who decides the budget.

7 MR. DUNLAP: Where does the budget come from? Who  
8 signs off on changes to the program? Who signs off on  
9 changes to the terms and conditions. Where's the feedback  
10 come from? And --

11 MR. SANDICK: Those issues were first raised in the  
12 joint letter with us a week ago.

13 MR. DUNLAP: But --

14 MR. SANDICK: -- you haven't come here today  
15 prepared to answer those.

16 And some of these issues like laches and others  
17 things, they were never mentioned even in the letter --

18 (Simultaneous conversation)

19 THE COURT: I -- don't you just love to hear  
20 laches, though?

21 MR. SANDICK: It's a wonderful common law doctrine.  
22 It has no application here.

23 But it was never mentioned in the letter --

24 (Simultaneous conversation)

25 THE COURT: Well, he said you waited five years,

1 so --

2 MR. SANDICK: It was never mentioned in their  
3 letter. It was never mentioned in meet-and-confers.

4 We can't have a system where we just come in and  
5 spring things on the Court and opposing counsel for the first  
6 time --

7 THE COURT: No, better you should spring them on a  
8 Friday night.

9 MR. DUNLAP: Yeah, Your Honor, we were --

10 (Simultaneous conversation)

11 MR. DUNLAP: We were not trying to spring anything  
12 on them. We understand -- again, on specific issues like  
13 more on terms and conditions and more on finances. We're  
14 meeting and conferring.

15 It is on this threshold issue that we understood  
16 that there was a dispute, and I haven't heard anything from  
17 Mr. Sandick indicating that there's not --

18 (Simultaneous conversation)

19 THE COURT: I want to know specifically what you  
20 want him to do -- one, two, three.

21 MR. DUNLAP: I want him to conduct a reasonable  
22 investigation.

23 THE COURT: What do you mean by that?

24 MR. DUNLAP: I -- well, he has to talk to the folks  
25 at JJHCS about who they seek approvals for, coordinate, work

1 with, the key topics in the case.

2 And I want him to talk to people at Janssen,  
3 however that's organized, about anything they do regarding  
4 CarePath or SaveOn.

5 And from there, I want him to answer the  
6 interrogatories without the restriction of JJHCS. And I want  
7 him to identify custodians who may have relevant materials  
8 outside of JJHCS.

9 Then we can negotiate about with which of those  
10 additional individuals become custodians --

11 (Simultaneous conversation)

12 THE COURT: I'm going to order you to do exactly  
13 what he's outlining.

14 I don't know how you do it. I don't know the  
15 mechanics. I am not internally involved here.

16 But if it satisfies them for you to do further  
17 investigation and find out --

18 (Simultaneous conversation)

19 MR. SANDICK: In a sense, Your Honor, maybe this  
20 is -- part of this won't be hard because we've already done  
21 it.

22 He doesn't like the answer. The traditional way  
23 that these things are maintained is not by one lawyer coming  
24 in and saying, you know, answer the interrogatory differently  
25 from how you answered it.



1 THE COURT: But he says you restricted your answers  
2 to J&J.

3 MR. SANDICK: Based on the fact that JJHCS is the  
4 entity that has knowledge on this issue and that we were not  
5 inclined to go all throughout the company looking for  
6 individuals.

7 If we had thought at the outset of this case, based  
8 on our extensive internal review prior to filing a complaint  
9 and interviews of employees and collection and review of  
10 documents that they -- the arrows pointed outside of JJHCS,  
11 we would be, of course, open to doing that, and we're not  
12 saying that they have to serve a subpoena --

13 (Simultaneous conversation)

14 THE COURT: But clearly Janssen's involved.

15 MR. SANDICK: Well, the name of the program at some  
16 point has been Janssen CarePath.

17 THE COURT: Yeah.

18 MR. SANDICK: And Johnson & Johnson, the overall  
19 entity, not just --

20 THE COURT: They make all the decisions for Janssen  
21 CarePath?

22 MR. SANDICK: JJHCS runs Janssen CarePath. I can't  
23 say --

24 (Simultaneous conversation)

25 THE COURT: But that's why they're the

1 administrator; right?

2 MR. SANDICK: No, the administrator is TrialCard,  
3 this third party that is also -- that we have identified and  
4 we've made document production from -- and probably we'll be  
5 making more if meet-and-confer -- which is still ongoing as  
6 to TrialCard Points in that direction.

7 The -- but the traditional way --

8 THE COURT: How do I get past this?

9 MR. SANDICK: Your Honor, this is a traditional --

10 THE COURT: Volunteer something to get past this?

11 MR. SANDICK: Yeah, my colleague Jeff says, let's  
12 go back and meet and confer on these issues and go through  
13 the documents and go through custodians. The issues that  
14 should have been done prior to the filing of this letter,  
15 we're, of course, to doing, you know -- not -- not right here  
16 in court --

17 (Simultaneous conversation)

18 THE COURT: But, you know, again, we're circular on  
19 this, because they're saying that you never did an initial  
20 preliminary full reasonable investigation.

21 MR. SANDICK: I don't agree with that, Your Honor.

22 THE COURT: You say you didn't.

23 So what am I supposed to do? Have an evidentiary  
24 hearing?

25 MR. SANDICK: Well, Your Honor, the way these

1 things are often addressed is that -- two ways: meet and  
2 confer by going specific documents, as Jeff just mentioned  
3 and as I proposed today.

4 And, secondly, they're going to take depositions of  
5 these people, and they're going to be sworn depositions.

6 THE COURT: Yeah, but I don't want to do that  
7 because I didn't -- I didn't do that the other way. I could  
8 have easily --

9 MR. SANDICK: Well --

10 THE COURT: -- do this at depositions with respect  
11 to some of the things that I ordered them to turn over.

12 MR. SANDICK: But, Your Honor, the other way --

13 THE COURT: I am not going to stumble on that,  
14 because you've got to be prepared for a deposition.

15 MR. SANDICK: But, Your Honor, the other way is  
16 very different. My colleague here is asking for one  
17 document, the operating agreement. My other colleague here  
18 was asking for 10 documents. Specific documents. Look, we  
19 know they have business plans. Give us the business plans.

20 THE COURT: Okay.

21 MR. SANDICK: If this were a specific request  
22 saying give us the documents that relate to this category or  
23 that category, again, we have a meet-and-confer. Maybe they  
24 get some of them. And if they didn't, they come here and ask  
25 for them.

1 But it this amorphous obligation -- you know, a  
2 court's going to order me to do something I think I've  
3 already done?

4 THE COURT: Well, I don't even know what to order  
5 you --

6 (Simultaneous conversation)

7 MR. SANDICK: -- and then I'll come back and he'll  
8 be unhappy --

9 (Simultaneous conversation)

10 THE COURT: So that's --

11 MR. SANDICK: Okay --

12 (Simultaneous conversation)

13 THE COURT: -- where I'm stuck.

14 MR. SANDICK: Okay.

15 MR. DUNLAP: Your Honor, if I could just -- I'm  
16 sorry. May I respond to that?

17 Again, we're asking for something that we think is  
18 very basic. He keeps trying to pull it back to let's meet  
19 and confer about specific custodians.

20 THE COURT: Yes.

21 MR. DUNLAP: But that -- you can't do that until  
22 you've done the reasonable investigation in the first place.

23 If you order us to go back and simply say, well,  
24 identify custodians based on their production, then they've  
25 gotten away with not answering our interrogatories or

1 identifying people with documents in the first instance  
2 outside of JJHCS.

3 THE COURT: He's saying there are no people if --

4 MR. DUNLAP: Well -- but -- that -- we think that  
5 the documents contradict that. I mean, one other way we  
6 could go here, Your Honor, is you could agree that we can  
7 take a 30(b)(6) deposition, not to count against our normal  
8 30(b)(6) --

9 THE COURT: Okay.

10 MR. DUNLAP: -- up front to identify individuals  
11 and locations of documents relating to the topics in this  
12 case. And it would have to be, obviously, for people outside  
13 of JJHCS. And if they're going to say -- if they're going to  
14 have someone come in there and swear, yeah, no one at Janssen  
15 has anything to do with setting the CarePath budget, no one  
16 at Janssen has ever had to give approval or sign off any --  
17 occasion about CarePath, that would be one thing.

18 But if they say, oh, yeah, no, there actually are  
19 some people at Janssen or the JALT or these other individuals  
20 who were involved, that would be something else.

21 THE COURT: So the 30(b)(6) be from J&J.

22 MR. DUNLAP: From JJHCS.

23 But, again, they're not disputing their possession,  
24 custody, and control goes outside of the four corners of  
25 JJHCS.

1 THE COURT: Right.

2 MR. DUNLAP: I mean, that's not our preferred  
3 route. Our preferred route is they actually do the  
4 investigation, answer the interrogatories, identify potential  
5 custodians, and then we would --

6 THE COURT: But their position is clear. They  
7 think they've done that.

8 MR. DUNLAP: They have to acknowledge to you that  
9 they have not gone outside of JJHCS.

10 THE COURT: They did --

11 MR. DUNLAP: They've acknowledged that to you.

12 MR. SANDICK: Well, Your Honor, just to -- I don't  
13 mean to double back to something we were discussing before,  
14 but with regard to this December -- I think you said  
15 December 2021 meeting of the Janssen Americas Leadership  
16 Team, JALT, we are prepared, based on the colloquy today and  
17 trying to think of some way to address Your Honor's concern,  
18 to go back, including to people who, you know, if -- are  
19 outside of JJHCS, if that's where we think the arrows lead,  
20 and to try to figure out are there more documents about that  
21 meeting.

22 THE COURT: Just go to Janssen. That's all I want  
23 you to do.

24 MR. SANDICK: Well, yes, and I don't mean to be  
25 harass, but even within Janssen, there are many different

1 entities.

2 Janssen is a, among other things, it's a brand  
3 name; right? There are Janssen therapies. The drugs that  
4 are at issue in this case, if you want to go to your doctor  
5 and you say, I want the Janssen drug daratumumab because I  
6 have multiple myeloma or something like that -- or probably  
7 your director tells you you need it --

8 (Simultaneous conversation)

9 THE COURT: Are there Janssen entities or areas  
10 of -- or groups that you have specific knowledge of that you  
11 want them to investigate?

12 MR. DUNLAP: Well, we've identified from their  
13 limited production with individuals who have crossover  
14 responsibilities and specific groups within Janssen --

15 THE COURT: We dealt with Mr. White already.

16 MR. DUNLAP: We did -- but I --

17 THE COURT: And we dealt with Ms. JALT already.

18 MR. DUNLAP: This is part of -- the JALT is the  
19 actual entity, the Janssen Americas Leadership Team.

20 THE COURT: Right.

21 MR. DUNLAP: But I think this is all proving our  
22 point. Johnson & Johnson lawyers aren't able to tell you in  
23 this hearing how Janssen works. How are we supposed to be  
24 able to do that? The burden's on them to do that  
25 investigation. Who at Janssen -- sorry. Who at Janssen is

1 involved in this? I mean, look, this is -- I understand it  
2 may be a little work for them. But this is what representing  
3 a big company is about.

4 And, again, I know you don't want to hear burden,  
5 but I just want to point out -- right? -- we've produced  
6 120,000 documents, and we're still going, and we're going to  
7 make another substantial production next month and probably  
8 after that.

9 They've produced 16,000 documents, and they say  
10 they're done. We just don't think that that's an indication  
11 that they have done a full production here on these topics.

12 And the fact that they're excludeing, categorically  
13 people outside of Janssen, we think, speaks to that.

14 MR. SANDICK: Your Honor, there's almost never a  
15 parallel between the documents produced by the plaintiff and  
16 produced by the defendant.

17 THE COURT: I don't -- that doesn't matter.

18 MR. SANDICK: Okay.

19 THE COURT: That doesn't matter. It doesn't.

20 What matters to me is this is what I would call a  
21 simple request, and that is to go to Janssen to figure out  
22 any way you can, any crossover decision-makers and disclose  
23 them, whether they be custodians -- either that, or he gets a  
24 30(b)(6) early on, which I don't how appropriate that is --  
25 forget appropriate. I don't know how advantageous that is



1 this early on in the case, honestly.

2 But if you could go back to Janssen -- I don't know  
3 how to structure this. I'm making you do an investigation  
4 and find out if there are crossover or integrated -- I don't  
5 know if that's the right word -- people --

6 MR. SANDICK: We'll do that, Your Honor. And I  
7 think our specific focus, if it meets Your Honor's approval,  
8 will be things that have been specifically identified. This  
9 meeting of the JALT group in December --

10 THE COURT: No, he wants you to do a full  
11 investigation.

12 MR. SANDICK: I understand that. But I think  
13 you -- as you've heard, we think we already have done what we  
14 were required to do here. We're now going back to do more  
15 because we want to be mindful of Your Honor's --

16 THE COURT: No, because I'm ordering you to do that  
17 and I'm the judge.

18 MR. SANDICK: Yes, that's --

19 THE COURT: So I can do that.

20 But I can't give you parameters because I don't  
21 know what they are other than Mr. Dunlap is sure -- and I am  
22 not unsure, sure, either way, that there are crossover -- or  
23 there are people in Janssen that make decisions for CarePath  
24 and/or Johnson & Johnson who help. And other than Mr. White  
25 and Ms. -- what's her name from JALT?

1 MR. SANDICK: Karen Laib was the other person who  
2 are -- we only heard about Ms. --

3 MR. DUNLAP: And that's part of the point.  
4 Mr. Sandick is a great advocate. He's trying to pull you  
5 back to these individual -- like, let's talk about --

6 THE COURT: No, he's not pulling me back.

7 MR. DUNLAP: I thought he was trying.

8 THE COURT: I just want them to do whatever they're  
9 supposed to do with respect to Janssen and its involvement in  
10 CarePath and --

11 MR. DUNLAP: Correct. And it's do the  
12 investigation --

13 THE COURT: Yeah.

14 MR. DUNLAP: -- of Janssen. And, again, if there's  
15 some non-Janssen entity that we're not aware of who's  
16 involved in this too, they should look at that.

17 But we think, really, most roads here lead to  
18 Janssen. Do the investigation. Answer the interrogatories,  
19 which they explicitly say they're not answering to anyone  
20 other than JJHCS. And identify people outside of JJHCS at  
21 Janssen who they think have relevant documents.

22 They can make their arguments later about  
23 cumulateness and duplicativeness and everything else.

24 THE COURT: Answer the interrogatories. I mean, I  
25 know you've said to me you did the investigation, you

1 answered the interrogatories. If you're going to say you are  
2 not going out of Johnson Health Systems, you can't say that.  
3 That's not a good answer. That's -- the answer is we've  
4 investigated, we've spoken to people in Janssen. I'm really  
5 at a loss at --

6 MR. SANDICK: We will do that, Your Honor.

7 THE COURT: -- how to do this.

8 MR. SANDICK: We will do that, Your Honor.

9 MR. DUNLAP: Well, I think what you've said is a  
10 good step of the way. Do the investigation. Answer the  
11 interrogatories.

12 We think, along with answering interrogatories,  
13 they should say who they think document custodians would be.  
14 At this point we're not asking them to commit to add anybody  
15 as custodians. Just tell who has relevant docs.

16 THE COURT: Well, you're going to discuss  
17 custodians.

18 MR. DUNLAP: That's exactly right. But they should  
19 go first -- right? Generally what happens is a party says --

20 THE COURT: Right.

21 MR. DUNLAP: -- you have doc requests. I've  
22 searched within my possession, custody, or control. Here are  
23 my proposed custodians.

24 And, of course, there's always discussion later on  
25 about changing that list.

1           What we're saying is because they exclude Janssen,  
2 answer the rogs, tell us who has knowledge, then identify  
3 folks at Janssen who are potential custodians, and then let's  
4 talk. Let's talk about burden and search terms and time  
5 frames and all the rest of it. We're glad to do that.

6           MR. SANDICK: Your Honor, we'll supplement the --

7           THE COURT: Perception is everything.

8           MR. SANDICK: Yes, I -- that's often true.

9           We'll supplement the interrogatory, as Your Honor  
10 has instructed. We will -- we will confirm our prior  
11 understanding or change it if we are not to be -- not to have  
12 the correct the first time.

13           But -- but I don't know what more we can say as the  
14 specifics. We have to be in specifics. And that's, of  
15 course, the concern that we've raised today and in our  
16 letter, that, you know, when we have a document issue, it's  
17 we need these 10 things. We need this one thing.

18           When they have a document issue, it's here our  
19 seven custodians, and we're not even asking for them. We  
20 don't know exactly how many we're asking for. It could be a  
21 lot. It could be many. Look through the whole company.  
22 We'll call it Janssen, even though it's actually five or six  
23 different entities --

24           THE COURT: Well, then we get to proportionality  
25 issues. I mean, if we're going to getting --

1 (Simultaneous conversation)

2 MR. SANDICK: Yes, and then we'll have to come  
3 back.

4 THE COURT: In the beginning of the case,  
5 especially a case of this size, you know, it's sort of like a  
6 funnel, you would hope. And you start out wide, and then you  
7 determine proportionality as you investigate and turn over  
8 documents and read documents. I would hope that that's the  
9 way the case goes.

10 But we're at the stumbling block at the top of the  
11 funnel. So --

12 MR. DUNLAP: Well, can I speak to proportionality  
13 for just a second -- because --

14 THE COURT: We're not really there yet.

15 MR. DUNLAP: No. But I think it bears noting at  
16 this point, because he just said, oh, when they ask for  
17 documents, like 10 documents here, two documents there, bunk.  
18 We have had -- three hundred thousand documents based on  
19 various based on various requests that we've searched.

20 THE COURT: No, and they've only turned over 60.

21 MR. DUNLAP: And we've --

22 MR. SANDICK: Well --

23 MR. DUNLAP: We've gone through all of those. And  
24 they're pushing us back on actually doing an investigation  
25 and answering interrogatories.

1 THE COURT: Okay.

2 MR. DUNLAP: We've done what we're supposed to  
3 do --

4 (Simultaneous conversation)

5 THE COURT: I really think this is a matter of  
6 perception. I think that you all will do what I say.

7 MR. SANDICK: I think -- I think we understand what  
8 Your Honor wants to do, and, of course, we'll do it. And  
9 then we'll be in touch with Mr. Dunlap, and --

10 THE COURT: And I'm sorry I'm stumbling, but I just  
11 don't know -- it's so hard to do this job when you don't have  
12 discovery and you don't have the inside information and I'm  
13 trying to get in each of your heads as to what your  
14 allegations are and your defenses, including laches. I mean,  
15 tell me that you didn't your whole life after you graduated  
16 law school want to hear laches?

17 MR. DUNLAP: I didn't think I'd see conduct this  
18 extreme, that they've given us --

19 THE COURT: This is the second laches defense that  
20 I've had in about two weeks in my whole life. So ...

21 MR. SANDICK: Making a comeback. It's hot. Laches  
22 is hot. We had laches trial last year in the Southern  
23 District in our case. It wasn't us, but our firm did.

24 THE COURT: How did it go?

25 MR. SANDICK: And the laches defense was rejected

1 | there. It was a case brought by Howard University about a  
2 | painting that had been stolen many, many years ago, and the  
3 | current possessor said, you didn't do enough to try to track  
4 | down the possessors.

5 |           And Judge Liman ruled in Howard's favor.

6 |           So laches --

7 |           THE COURT: Oh, isn't that interesting?

8 |           MR. SANDICK: You can have a laches trial.

9 |           THE COURT: So sort of the -- Phil, you can turn  
10 | the record off.

11 |           MR. DUNLAP: Well, Your Honor, recording -- we  
12 | do -- there are two other items.

13 |           THE COURT: Oh.

14 |           MR. DUNLAP: One is on, maybe --

15 |           THE COURT: Preview, maybe because I do have  
16 | criminal duty.

17 |           MR. DUNLAP: There's one about a motion to seal,  
18 | which is for some reason contested, which Evans is going to  
19 | address.

20 |           And then we should probably just talk about when  
21 | are you going to set the next conference and the relationship  
22 | to the substantial completion deadline?

23 |           THE COURT: Well, that, we can do off the record.

24 |           But they're giving you -- before we go on [sic] the  
25 | record -- what's the problem with the motion to seal?

1 MR. GREENBAUM: It's not returnable yet. They  
2 wanted to seal argument in one of their letters. And we  
3 objected to that. We believe it should be part of the  
4 record. They wanted to take certain words out.

5 In the last argument, if you remember, Your Honor,  
6 they argued that -- oh, if we comply with this --

7 (Simultaneous conversation)

8 (Conclusion of proceedings)

9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25



Certification

I, SARA L. KERN, Transcriptionist, do hereby certify that the 105 pages contained herein constitute a full, true, and accurate transcript from the official electronic recording of the proceedings had in the above-entitled matter; that research was performed on the spelling of proper names and utilizing the information provided, but that in many cases the spellings were educated guesses; that the transcript was prepared by me or under my direction and was done to the best of my skill and ability.

I further certify that I am in no way related to any of the parties hereto nor am I in any way interested in the outcome hereof.

s/ *Sara L. Kern*

10th of July, 2023

Signature of Approved Transcriber

Date

Sara L. Kern, CET\*\*D-338  
King Transcription Services  
3 South Corporate Drive, Suite 203  
Riverdale, NJ 07457  
(973) 237-6080